

Legislative Council Select Committee

TasWater Inquiry

Submission: TasWater v
Graeme & Cheryl Gilmour

25 August, 2020

The Secretary
Legislative Council Select Committee – TWT
Legislative Council Parliament House
HOBART TAS 7000

Dear Sir/Madam,

Re TasWater Inquiry

I refer to the Parliamentary Inquiry currently being undertaken in relation to TasWater.

After having spoken to Ruth Forrest MLC in relation to this Inquiry, I would like to bring to your attention the matter I have been battling with TasWater with (formerly Cradle Mountain Water) for some 10 years and continuing. I genuinely believe it is a good example of the many failings of TasWater.

My wife (Chery Gilmour) and I own the property situated at 30b Old Bass Highway, Wynyard in Tasmania where we have operated our business *Beach Retreat Tourist Park* since buying same as a going concern in or around September, 1999 ("our Property").

As a small business operator in Tourism, we have been put through hell by TasWater (and its predecessor Cradle Mountain Water) since in or around 2009 when Tasmania's water infrastructure was transferred from local Council to the various water corporations around the State. These same issues continue to this day with no end in sight other than through litigation.

By way of the most basic summary, the actions of TasWater to date encompass:

- (a) Their very first communication to us over 10 years ago, advising that they "have audited us" and determined they we are not paying what we should for our "fixed infrastructure" and that we should think ourselves lucky they are not going to back charge us;
- (b) Failing to understand and comply with their governing law and instruments (including Price and Service Plan 3);
- (c) Failing to understand the water infrastructure in place on our Property leading them into error and then refusing to come and inspect our Property (as their customer) in order to correct themselves;
- (d) Bullying behaviour by way of demands for payment in circumstances of their own wrongdoing;
- (e) Pressing fixed infrastructure charges upon us some 10 times higher than competitors by making us pay for public infrastructure (firefighting pipeline and associated 100mm meter) not required for the operation of our business and not required as a matter of law.

- (f) Unhelpful , aggressive and non-conciliatory employees including their internal legal department;
- (g) TasWater relying on made up or otherwise incorrect information/assumptions and using those falsehoods against us in attempts to demand payment for charges whereupon when questioned, they refuse to evidence how they came into receipt of such fictitious information.
- (h) TasWater refusing to implement alternative resolutions to disputes when all relevant parties are in agreeance (ie Tasmanian Fire Service and us).

The issues we have had (and continue to have) with TasWater come down to three areas, namely (in order of significance):

- (A) Charging for infrastructure (namely a 100mm water meter associated with a firefighting pipeline as a piece of public infrastructure) that is not needed, wanted, nor required as a matter of law to operate our business.
- (B) Levelling excessive ET sewerage charges for my property which includes TasWater showing a disregard for both the purpose and objective behind calculations of ET charges under Price and Service Plan 3 (PSP3) and the alternative means of calculating ET charges provided therein when extraordinary circumstances occur (ie major leaks in underground water pipes); and
- (C) Failure to provide a Water Leak Remission.

To keep matters simple and to save replication, I have enclosed in this correspondence a complete copy of the documents I provided to the Ombudsman's Office in relation to this matter as it provides a full picture of everything that has occurred together with evidence for each point raised. To this end, please find **enclosed** the following:

- 1. Complaint to Ombudsman dated 27 January, 2020 together with all attachments;**
- 2. Follow up Letter to Ms Leah Dorgello of the Ombudsman's Office dated 27 May, 2020 together with attachments;**
- 3. Correspondence from Ms Leah Dorgello of the Ombudsman's Office dated 20 August, 2020 declining to investigate the matter; and**
- 4. Correspondence to Ms Leah Dorgello of the Ombudsman's Office dated 25 August, 2020.**

For completeness, I note that the Ombudsman's Office declined to investigate, not for lack of merit, but instead citing:

- (i) "The actions of principal concern are of historical nature and it is not possible for our office to review these 17 years later";

- (ii) "...that this long running dispute appears only to be able to be settled in court"; and
- (iii) "I am sorry that I have not been able to assist further in the resolution of this complaint, but I consider that it would not be appropriate to intervene at this late stage of a legal dispute."

In effect, the Ombudsman's Office has declined to assist as the matter is too detailed and complex for them whereby they would prefer not to involve themselves despite having the ability to do so. I say this for many reasons, including:

- That the matter is ongoing, and thus the time limit for the Ombudsman's Office to decline to investigate has not activated;
- Ms Dorgello acknowledges that any delay was caused by Taswater in failing to "...resolve this matter in a timely manner" whereby she will "...make critical comments to TasWater about the failure...". To punish the victim by using 'delay' in this context to refuse to investigate has no sound basis in law; and
- The Ombudsman's Office is specifically designed as a means to resolve complaints which are inevitably legal in nature and to protect people like ourselves from egregious behaviour of statutory bodies in order to uphold a high standard of public administration in this State.

We are therefore paying the price for TasWater's failure to resolve our concerns in a timely manner and treat us with the respect a customer deserves when a genuine complaint about charges being levied is made.

As a final point in this initial summary, you will note from the enclosed correspondence provided to the Ombudsman's Office that through our discussions with the *Tasmanian Fire Service* that they are content to remove the 100mm water meter from our Property to resolve this matter moving forward. Despite this, you will see from Ms Dorgello's correspondence dated 20 August, 2020 that TasWater have informed the Ombudsman's Office that they will not implement a legally sound and agreed resolution to the issue. To this end, Ms Dorgello notes: *"I received further information from TasWater in June 2020 in which it stated that it will not commence reviewing the viability of this work [the Tasmanian Fire Service proposed solution] until there has been settlement of the current issues surrounding ownership and liability for charges in relation to the 100mm connection".* Ms Dorgello goes on to note *"I do not consider this best practice, as charges are continuing to accrue and an ongoing solution is desirable regardless of the outcome of the dispute...I will make comments to TasWater about the importance of it attempting to reach resolution where possible of outstanding issues in order to mitigate loss to all parties."* If you wanted an impartial example of the way TasWater have conducted themselves in relation to us and our Property, this is a good one. It shows not only a complete disregard for their customer (my wife and I), but a lack of desire to resolve a dispute and an inability to understand that they have a legal duty to mitigate their losses which is a key tenet of civil litigation. The fact this is being sprouted by a monopolistic water corporation whom a court will hold as having 'model litigant' status, beggars belief and does a good job of summarising the attitude of contempt they hold for their customers.

I appreciate this is a matter with a great deal of history, but I genuinely believe my matter may assist this Inquiry in getting a thorough understanding of the behaviours and culture that seems to be rampant at TasWater.

As for us, we are now expecting to be served with a Civil Claim in the near future from TasWater in relation to this dispute which we will of course defend. I am hopeful however that once they engage a law firm to review the matter, they may obtain some sound legal advice in line with what we have been telling them for many years for which they have refused to engage external legal counsel to consider.

If you require any information or wish to discuss this matter in further detail, please do not hesitate to give me a call.

Regards,

Graeme Gilmour

GPO Box 266 Hobart Tasmania 7001

Phone 1800 091 170

Email ombudsman@ombudsman.tas.gov.au**Ombudsman**
Tasmania

Complaint Form

File number:

1. Details of person making the complaint

Title **Mr** First Name **GRAEME** Surname **GILMOUR** DOB **20/01/51**
 Address **306 OLD BASS HIGHWAY** Suburb **WYNARD** Post Code **7325**
 Telephone (business hours) **(03) 6442 1998** Mobile **0458 189 636** Email Address **gcgilmour51@gmail.com**

Do you have a disability or other special needs?

Yes

☒ No

If yes, please specify:

Are you of Aboriginal or Torres Strait Islander origin?

☒ No

Yes, Aboriginal

Yes, Torres Strait Islander

Yes, both Aboriginal and Torres Strait Islander

What is your preferred language?

English

Do you require an interpreter?

Yes

☒ No

Are you an International Student?

Yes

☒ NoWhat is your complaint type? ☒ Administrative Action

Public Interest Disclosure

Personal Information Protection

Unknown

Are you completing this form on behalf of another person?

Yes

☒ No

If No, please continue to Section 2

If Yes, please identify that person below

Please note that a complaint should normally be made personally. There are only two situations in which a complaint may be made by a representative – (1) where the person has died or is not able to act for themselves, and (2) where the complaint is made by a Member of Parliament, with the consent of the person concerned.

Title First Name Surname DOB
 Address Suburb Post Code
 Telephone Mobile Email Address

Please describe your relationship with this person:

2. Details of agency or organisation

Name of the agency or organisation you are complaining about:

TasWater

Address

169 MAIN ROAD

Suburb

MOONAH

Post Code

7009

Telephone (business hours)

13 6992

Division

N/A

Have you contacted the agency or service provider yourself to try and resolve the complaint?

☒ Yes

☐ No

If yes, what happened? If no, why?

There were initially four grounds of dispute/complaint. One issue resolved through negotiations (Damage to my property caused by TasWater employees) but three further issues remain outstanding, namely: Charging for 100mm meter, ET sewerage charges levied and failure to provide any water leak remission. You will see from what follows that I have led the push to resolve this matter amicably with TasWater but as a result of a letter from Mr Jeremy Morse (Dept Manager Legal Services) dated 13 December, 2019, he has determined that there is no further merit in continuing to engage in written communications with their office surrounding this issue.

3. Time Limit

Date when what you are complaining about took place: 2009 and continuing to date

Usually the Ombudsman will not investigate a complaint if the action complained of took place more than two years ago unless there is a reasonable excuse for the delay. If what you are complaining about happened more than two years ago, please explain why you have not complained about it to the Ombudsman until now.

The issues have been disputed from the point of the water authority passing from North-Hwyndall Council to Crook Mountain Water in or around 2009 and is continuing to this day through TasWater. As a result of systematic failings with both Crook Mountain Water and now TasWater, I have led the push to resolve this matter once and for all over the last 10 months whereby we are only now at the point that an amicable resolution through direct negotiations with TasWater has been exhausted.

4. Complaint Details

Please outline your issues of complaint.

- Be as specific as possible. Provide relevant dates and the names of people you have contacted.
- If there is not enough space to describe your complaint, attach extra paper.
- Please attach any documents such as letters, accounts or reports that are relevant to your complaint.

Please see attached document titled "Details of Complaint"

5. Outcomes

What do you wish to achieve by making a complaint?

- | | |
|---|--|
| <input checked="" type="checkbox"/> Explanation | <input type="checkbox"/> Access service |
| <input checked="" type="checkbox"/> Apology (written/verbal) | <input checked="" type="checkbox"/> Adequate service |
| <input checked="" type="checkbox"/> Change in policy or procedure | <input type="checkbox"/> Disciplinary action |
| <input type="checkbox"/> Conciliation | |
| <input checked="" type="checkbox"/> Other (please specify) | |

Resolution to the overcharging for services my wife and I are experiencing as outlined in the attached "Details of Complaint"

6. Have you made this complaint to any other review body?

The Ombudsman may decline to investigate your complaint if he is satisfied that you have or had a right to have the action about which you complain reviewed by a court or tribunal but haven't exercised that right. Alternatively, if you could apply to have the matter reviewed administratively, the Ombudsman may decline to investigate if you have not done so.

If you can or could have referred the action about which you complain to a court, tribunal or other review body but haven't, you will need to advise why you haven't.

Yes ☒ No (Please provide details:)

7. Privacy Statement

If you make a complaint under the *Ombudsman Act 1978*, the Ombudsman will collect your personal information. Personal information will be used in the management of the complaint, and may be disclosed to the public authority complained about to enable preliminary enquiries and/or an investigation to be undertaken. Personal information will be managed in accordance with the *Personal Information Protection Act 2004* and, on request to the Ombudsman, may be accessed by the individual to whom it relates.

A copy of this complaint form and relevant accompanying documentation is usually sent to the public authority for their response. If there are reasons why this should not be done, please set them out below:

N/A

8. Signature

Signature of person making complaint:



Date:

27-1-20

9. How did you hear about Ombudsman Tasmania?

Television

Radio

Brochure

Word of Mouth

Newspaper (please specify)

☒ Other (please specify) Internet

For assistance in completing this form, please phone this office on 1800 001 170.
Send your complaint form to: Ombudsman Tasmania, GPO Box 960, HOBART, Tasmania 7001
Email your complaint form to ombudsman@ombudsman.tas.gov.au,

Ombudsman Tasmania is located on Level 6, 86 Collins Street, Hobart.

DETAILS OF COMPLAINT

My complaints against TasWater have a long history, but at their core are relatively simple matters of dispute. They can be broken down into three categories:

1. Charging for a 100mm meter that is not needed, wanted, nor required as a matter of law;
2. Levelling excessive ET sewerage charges for my property which includes TasWater showing a disregard for both the purpose and objective behind calculations of ET charges under Price and Service Plan 3 ("PSP3") and the alternative means of calculating ET charges provided therein.
3. Failure to Provide a Water Leak Remission.

As a result of the above, TasWater are seeking from my wife and I approximately fifty thousand dollars (\$50,000.00).

I will address each of the above three areas of complaint separately for ease of reference.

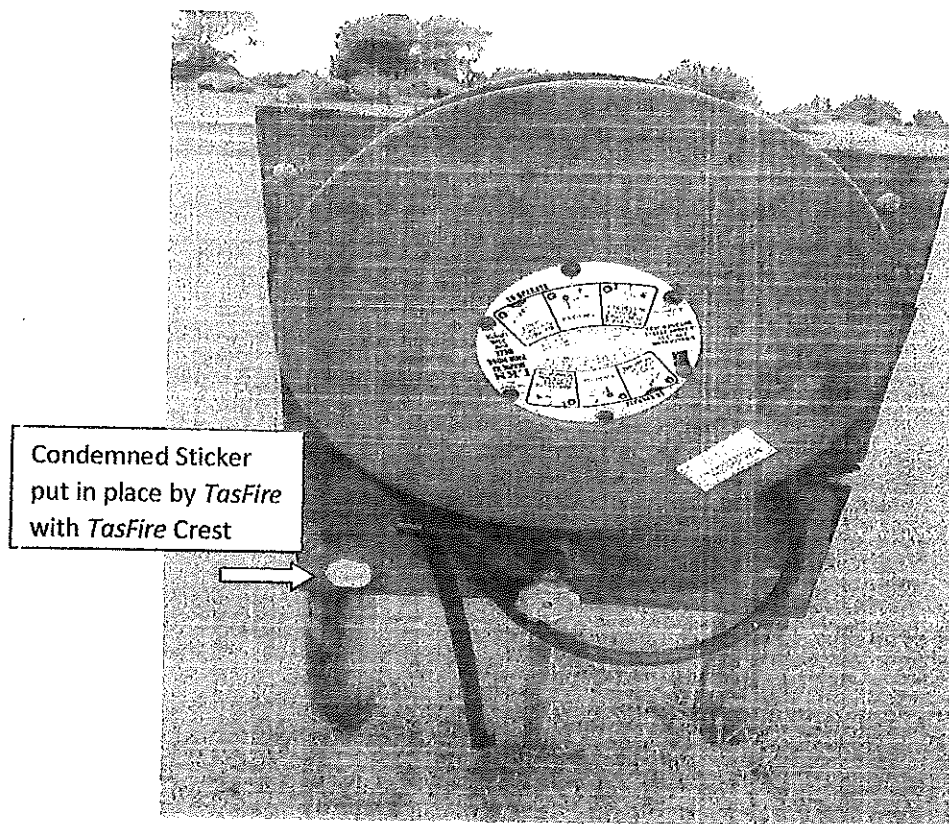
At the end of this document I will attach the most recent chain of correspondence in this matter in chronological order so that you have the full evidence of what has occurred to date.

Charging for a 100mm meter that is not needed, wanted, nor required as a matter of law

1. My wife and I purchased 30b Old Bass Highway ('the Property') in or around September, 1999.
2. At the time we purchased the Property, it was being run by the Waratah-Wynyard Council ('The Council') as a Caravan/Tourist Park. The land was owned by the Council and it was leased to a man by the name of Rod Walker who operated the other Tourist Park in Wynyard at that time as well.
3. My wife and I negotiated to buy the business from Mr Walker and the land freehold whereupon we moved onto the Property and commenced operating same from in or around September, 1999.
4. Prior to the Property being used as a Tourist Park, it was a public road.
5. The Property has at all times (that is both prior to our ownership and during our ownership) had water entering it from the western end through a 100mm pipeline running under the roadway as well as a 32mm connection.¹
6. The 32mm connection services all infrastructure located on the Property.
7. The 100mm pipeline services what are now disused fire hose reels and can otherwise only be accessed by TasFire through fire hose connection points in the ground as a piece of public infrastructure should a fire breakout.²

¹ See Letter to TasWater (Attn Juliet Mercer) dated 5 April, 2019 attached.

8. Given the Property's history as once being a public road, as Councils do with public roads, they originally placed the 100mm water pipeline under the road as a piece of public infrastructure that TasFire could access should they need to for fire fighting purposes. When many decades ago the Council blocked off the Western end of the public road and created a Caravan and Tourist Park, we can only assume Council determined it would be a good idea to install several fire hose reels which they connected to the 100mm pipeline under the road in case of emergency, given the 100mm pipeline infrastructure was already present.
9. By the time my wife and I purchased the Property, the requirement was for each self contained unit to have smoke detectors and fire extinguishers installed and there was no legal requirement to have fire hose reels etc. As a result, TasFire deemed them to be unnecessary, such that they never wished to inspect them during the annual inspections they carry out in accordance with the *Building Act 2016*, the fire hose reels went into disrepair and TasFire ultimately condemned them without any issue. A photo of one such reel is produced below.³



10. In light of the above, since we purchased the Property, the fire hose reels have always been redundant pieces of infrastructure which we neither wanted nor required as a matter of law.

² See Letter to TasWater (Attn Juliet Mercer) dated 5 April, 2019 attached hereto; Report from Braddon Building Surveying dated 16 August, 2019 attached to Letter to TasWater (Attn Jeremy Morse) dated 13 September, 2019 attached.

³ For further photos of condemned infrastructure by TasFire see Letter to TasWater (Attn Juliet Mercer) dated 5 April, 2019 attached.

11. The 32mm meter and pipeline has at all times been servicing ALL the water requirements for the Property.
12. On 17 November, 2003 the Council resolved at their Council meeting to endeavour to seek the formal agreement from my wife and I that we were prepared to accept ownership and future responsibility for the 100mm water main on the Property. At this point the meter associated with this connection was located outside the Property on Council land. A copy of the Minutes from the Council are attached to the correspondence to TasWater (Attn Juliet Mercer) dated 5 April, 2019 annexed hereto.
13. It is important to note at this time as to why issues surrounding the Property were before the Council on 17 November, 2003. This came about as a result of a straight forward Development Application lodged with my consent for a new resident to move their mobile home onto the Property to join the other half dozen or so permanent residents living on site. During the Council performing their due diligence, they realised that during their ownership of the Property, they had built infrastructure without themselves going through the proper planning process which resulted in them building over the sewer rising main that existed on the Property which transported effluent from the township of Wynyard to the local treatment facility. Understanding that it was their mistake that led to this and that should a sewerage leak occur under accommodation they could be held liable for personal injuries and damages, they determined they would need to budget to close off the existing sewer rising main and instead re-route it around the front of the Property (under the beach).

It can be reasonably inferred that during this process of determining their historical failures and issues of future liability and cost savings (given the relocation of the sewer rising main was budgeted to cost \$120,000.00⁴) they determined that Council no longer required the 100mm pipeline for fire fighting infrastructure as it was now on private property and they had a 100mm pipeline under the then 'new' highway into Wynyard called the "Old Bass Highway" which is within 120m of all properties, it was therefore redundant infrastructure insofar as they were concerned. Hence, the Minutes state:

"Currently there are three water meters located within the property that Council read and service. It is possible to isolate the main to the property so that it can be utilised as a private fire service by installing a valve on the eastern end of the property so that it can be utilised as a private fire service by installing a valve on the eastern end. This would then allow Council to install a single water meter to the property and therefore provide future savings".

It is abundantly clear that Council's decision to place a 100mm meter inside the boundary of the Property was done with a desire to save them costs and absolve themselves of any future responsibility for the 100mm pipeline. That is distinct from any legal requirement for the Property to be serviced by this connection.

14. Importantly to this dispute, no agreement was ever sought from my wife and I in relation to taking responsibility for the 100mm pipeline and any meter measuring water passing through same and neither did we provide consent for Council to place a 100mm meter onto our property. A copy of a letter from General Manager of the Council, Mr Shane Crawford

⁴ See p 107 of the Minutes attached to the Letter to TasWater (Attn Juliet Mercer) dated 5 April, 2019.

dated 5 July, 2019 confirming the above was provided to TasWater in our letter of 13 September, 2019 which is attached to this correspondence. It is also worth noting that at no point did the Council install a valve on the eastern end of the Property such that the 100mm connection remains a piece of public infrastructure to this day. To this end, you will note from the **attached** Schedule of Easements that the 100mm connection (denoted by the *Water Supply Pipeline Easement 2.00m wide*) was a burdening easement for my Parents as it solely benefits the Council. It remains unchanged to this day.

15. Shortly after the Council meeting on 13 November, 2003 a verbal promise was given by certain Council employees to my wife and I that the 100mm connection would in fact be removed from the Property at Council's expense. Unfortunately, despite this agreement, the Council never removed this connection.
16. One day in or around early 2004, I discovered that council workers had entered the Property and without any discussion with my wife and I, had placed a 100mm meter approximately 1m inside the western boundary to the Property.⁵ As you can imagine, I immediately contacted the Council to work out what was going on, complained bitterly about them effectively 'dumping' a piece of infrastructure on my Property despite their verbal assurances that they would be removing this connection entirely. Council of course was the water authority at this point in time and rather than dig up the 100mm meter and shut off this connection (given we did not need, nor want, nor lawfully require the 100mm connection) they assured us it would not affect anything into the future and that the status quo would remain whereby we would only be charged for the 32mm connection (or equivalent) and all water used in relation to same. True to their word, no charges were ever rendered by the Council for this infrastructure whilst they were the water Authority and we took no further issue with this matter.
17. Fast forward around 5 years to in or around 2009 when the water authority moved to the new company, *Cradle Mountain Water*. *Cradle Mountain Water* purportedly reviewed the infrastructure in existence on the Property and determined that they were permitted to charge fixed fees for both the 32mm meter which services all our water requirements for the Property and the 100mm meter which is neither needed, nor wanted, nor required by law and services nothing on the Property other than disused and condemned fire hose reels and fire plugs.⁶
18. Since in or around July, 2009 I battled with *Cradle Mountain Water* through phone calls, letters and on site visits to get them to understand the realities of what had occurred and that they were effectively trying to gouge a small business for around \$8,000.00 per year for something that was not needed, wanted nor required by law which as a result I had never previously been charged for and which was supposed to have been removed or shut off years before.
19. During the period 1 July, 2009 until 30 June, 2013 I battled with *Cradle Mountain Water* and essentially got nowhere, receiving convoluted correspondence after correspondence which clearly evidenced their lack of understanding regarding how the water infrastructure on the

⁵ Report from Braddon Building Surveying dated 16 August, 2019 attached to Letter to TasWater (Attn Jeremy Mcrse) dated 13 September, 2019 attached.

⁶ Report from Braddon Building Surveying dated 16 August, 2019 attached to Letter to TasWater (Attn Jeremy Mcrse) dated 13 September, 2019 attached.

Property worked and a complete lack of understanding of the law surrounding this issue. Rather than attach these historical communications here, I instead intend to focus on what has occurred over the last 12 months in this matter as it encompasses some of what occurred under *Cradle Mountain Water's* reign and provides what I believe to be ample information to properly consider this matter. That said, if you would like to see my file involving communications with *Cradle Mountain Water*, I am happy to provide you with same.

20. Effectively, when TasWater commenced control of the water supply and infrastructure in this state, on 1 July, 2013 we started from the very beginning. From then on I received bills with random charges present concerning the 100mm meter, including some with charges at reduced rates and some with full rates associated with the 100mm connection, all under the auspices that they were working on a solution to the issue we had raised. I would contact TasWater to discuss this issue with them and time and time again got given the run around. I was passed from one person to another and then one person who was looking into the issue would resign or go on extended leave of some sort and someone else would take carriage of my file and we would start all over again. I would pay some bills in full, others partially and some not at all in what I believed was being fair on all parties as we continued to purportedly work to resolve this matter. However, I essentially got nowhere with TasWater and at 68 years of age, the stress it was placing on my wife and I was too much and was affecting our health.
21. Thankfully, my son, Mr Ryan Gilmour ('my Son') is a lawyer and was a Senior Associate with *Rae & Partners* and he kindly agreed to have a look at the matter in his spare time to advance it to what we hoped would be a sensible conclusion.
22. After several communications with TasWater, my Son confirmed my thoughts that there was a complete lack of any real legal knowledge within TasWater's general staff and their internal legal department. On the advice of my Son and in what I hoped would be a final effort to resolve this matter, I obtained a report from *Braddon Building Surveying* regarding the legal need for the Property to have the 100mm connection as a piece of fire fighting infrastructure.⁷ You will note that Mr Magnus from Braddon Building Surveying confirms everything my Son advised TasWater in correspondence (see below) in that there is no legal requirement for the Property to be serviced by either:
 - (a) The 100mm main;
 - (b) Fire plugs; or
 - (c) Fire hose reels
23. Faced with the irrefutable fact that we are not lawfully required to have the 100mm connection to our property (nor any fire plugs or fire hose reels whether connected to the 100mm connection or not) the latest position of TasWater is to view TasFire as something other than a creature of statute. That is to say, that somehow under the *Fire Services Act 1979 (Tas)* and the *Fire Service (Miscellaneous) Regulations 2017 (Tas)* they have the ability to force citizens to maintain fire fighting infrastructure at their personal cost in

⁷ Report from *Braddon Building Surveying* dated 16 August, 2019 attached to Letter to TasWater (Attn Jeremy Morse) dated 13 September, 2019 attached.

circumstances where there is no legal requirement for same. Interestingly, TasWater do not refer to the sections in these pieces of legislation which they rely upon.

24. The reality is of course that *TasFire* are bound to apply the legislation and to comply with the relevant legislation they work under. Whilst their opinion can provide guidance under certain sections of certain pieces of legislation in this state, ultimately if there is no legal requirement for a private citizen to have certain fire fighting infrastructure they cannot enforce such private citizens to have same as if they are some form of dictatorship that acts outside of statute. Case in point are the fire hose reels referred to above which have been condemned by *TasFire* themselves and for which they recognise they have no lawful authority to insist they be made operational given they are not required to operate the existing business on the Property as confirmed by *Braddon Building Surveying*.
25. To be clear, my dispute with TasWater surrounding this issue is in respect to them trying to charge me for the 100mm connection which I do not need, want nor lawfully require. If TasWater wish to strike a deal with *TasFire* regarding maintaining and paying for this service as a piece of public infrastructure, then they can do so. It is therefore not a question of me insisting they now rip it out of the ground or otherwise terminate the supply of water to same (despite the earlier indication given by the Council as referred to above). However, as you will no doubt appreciate, as a small business operator on the North West of the state, I will not be held responsible for paying in excess of \$8,000.00 per year for a service I do not need, want nor lawfully require and derive no benefit from same in order to unjustly enrich themselves and put me out of business.
26. The resolution to this aspect of the dispute is the obvious one. That is:
 - (a) TasWater are to agree in writing that they will not render charges against the Property, (both fixed and variable) associated with the 100mm connection, both historically and into the future;
 - (b) TasWater are to apologise for their bullying behaviour and stress, time and inconvenience they have caused to my family and I as a result of their actions;
 - (c) TasWater are to recalculate the fixed costs attributable to a single 32mm connection from 1 July, 2009 to date and provide itemised details of same;
 - (d) TasWater are to calculate what we have paid to them and their forbearer for fixed water infrastructure charges from 1 July, 2009 to date; and
 - (e) The difference between (a) and (b) above will reflect what is either owed to TasWater by us, or alternatively, what TasWater owe to us by way of reimbursement. Either way, payment of same is to be made by the relevant party within 30 days of the date of reaching agreement with respect to the figures provided at (a) and (b) above.

Levelling excessive ET sewerage charges for the Property

27. The dispute regarding ETs can be summarised as follows:
 - (a) TasWater failing to acknowledge or otherwise appreciate that an ET is designed as a measure of load a property places on the sewerage system whereby one ET is

considered to be the annual sewerage discharge from a single residential dwelling under dry weather flows (PSP3).

- (b) TasWater failing to understand or appreciate that in accordance with 9.7.3 of the PSP3 they have the ability to "...assess the number of ETs on a case by case basis if the circumstances warrant it"
 - (c) TasWater failing to understand or appreciate that there are alternative means of calculating ETs for the Property (given its use as a Caravan/Tourist Park) under AS01 of PSP3.
 - (d) TasWater failing to accept that the circumstances presented in this instance require an individual assessment of ETs in line with PSP3 in order to bring the charging for ETs in line with its purpose/definition, achieve a fair outcome and to avoid the Corporation being unjustly enriched through excessive charging.
28. TasWater are aware of a number of leaks in the underground piping infrastructure that have been affecting the Property at various times in recent years. These leaks have been well documented and TasWater have been provided with evidence from plumbers rectifying these leaks on previous occasions.⁸
29. TasWater have accepted these leaks have caused significant costs to us in the form of excess water charges and are now reading the water meter monthly to help identify when these underground leaks occur as they have caused our water bills to increase several hundred percent in certain quarters previously⁹.
30. Despite acknowledging the leaks we have been experiencing whereby water is draining into the beach sand underground (so therefore undetectable from the surface in the traditional 'bubbling' type leak) and therefore not entering the sewerage system, they have instead used our misfortune to calculate ETs on quarters that have been affected by leaks which has greatly inflated the number of ETs we are being charged for in circumstances where the water in question was leaked into the ground and thus created no load on the sewerage system and thus at odds with the definition of how an ET is calculated under PSP3.¹⁰
31. TasWater are currently charging 15.4 ETs for the Property and have been doing so since around the middle of 2018.¹¹
32. From mid 2018 back through 2017 and beyond, TasWater were charging 24.8 ETs for the Property.¹²
33. To put into perspective as to how significant the overcharging for ETs is concerned, I provide the following water usage summary and statements evidencing same from the most recent 6 month billing period:
- (a) 1/7/19 – 29/7/19 = 1kL. Attached and marked "i" is a copy of the Statement

⁸ See for example letter to TasWater (Attn Katie Hooper) dated 15 May, 2019 attaching letter from plumber Mr Stephen Keene.

⁹ See TasWater statements attached hereto marked "i"–"v".

¹⁰ See for example letter to TasWater (Attn Katie Hooper) dated 15 May, 2019 attaching letter from plumber Mr Stephen Keene.

¹¹ See Letter to TasWater (Katie Hooper) dated 15 May, 2019; p5-6.

¹² Ibid

- (b) 29/7/19 – 30/8/19 = 0kL. Attached and marked “ii” is a copy of the Statement
 - (c) 31/8/19 – 30/9/19 = 2kL. Attached and marked “iii” is a copy of the Statement
 - (d) 1/10/19 – 29/10/19 = 7kL. Attached and marked “iv” is a copy of the Statement
 - (e) 30/10/19 – 18/12/19 = 119kL. Attached and marked “v” is a copy of the Statement.
34. The above (almost) 6 month period shows a total water usage of 229kL. Extrapolating that figure for a 12 month period you obtain a figure of around 500kL. With 1ET being equivalent to 200kL, you derive an ET for the Property of approximately 2.5ETs.
35. TasWater themselves acknowledged in a letter from their then Customer Liaison Officer Mr Brendon Lehner dated 24 April, 2017 the following information from a 645 day period:¹³
- (a) Daily average water use with leak – 16.87kL;
 - (b) Daily average use normal (without leak) – 2.55kL
36. That is, by using the normal use figure to derive the actual load being placed on the sewerage system (as per the definition of ETs and its objective in PSP3) you derive an ET of 4.65 $((2.55 \times 365)/200\text{kL})$. Despite this knowledge and my attempts to get through to TasWater that they cannot justify charging exorbitant ET charges for the Property when faced with the fact the water lost through leaks has not entered the sewerage system and thus to charge for same would be to unjustly enrich themselves, they refused to listen and continued to increase my ET charges putting my wife and I as small business owners under financial stress.
37. You will note that when compared with Mr Lehner’s own figures which produce an ET of 4.65. I have been charged/attempting to charge me over 5 times what I would have been charged if the leaks did not occur and are currently still seeking to charge me over 3 times what I should be paying for sewerage.
38. My Son on my behalf went into great detail with TasWater explaining the application of PSP3 to this scenario including providing numerous account statements and undertaking several calculations as provided for in PSP3.¹⁴ My Son undertook the task in the hope that we could educate them as to the law under which they operate. Based on all the data available, we generously offered to pay 8.0ETs for the Property commencing from 2012 to date. This was rejected by TasWater by a single page letter in response from their Revenue Assurance Manager, Mr Geoff Purchase dated 20 May, 2019¹⁵ who made no effort to address the various points raised in our correspondence regarding alternative calculations available under PSP3 and the ability to assess the number of ETs on a case by case basis if the circumstances warrant it.¹⁶
39. As stated in my Son’s letter to TasWater dated 15 May, 2019, to resolve this aspect of the dispute once and for all, I am happy to settle on the following:

¹³ See letter from Mr Brendon Lehner dated 24 April, 2017 attached to the Letter to TasWater (Attn Katie Hooper) dated 15 May, 2019 attached.

¹⁴ Letter to TasWater (Katie Hooper) dated 15 May, 2019; p5-10.

¹⁵ Letter from TasWater dated 20 May, 2019 attached.

¹⁶ 9.7.3 of PSP3

- (a) Commencing from the beginning from 2012 and continuing to date, recalculate each quarterly sewerage charge based on an ET of 8.0 and advise of the amount of each associated quarterly charge.
 - (b) Deduct the calculated amount derived from (a) above from the amount we have paid TasWater during that same period and provide us with a refund cheque for the difference in value.
 - (c) In accordance with PSP3, TasWater periodically assess ET charges for the Property on an individual basis into the future until such time as you have a continuous two year period free from significant water leaks, whereupon TasWater may return to their traditional formula for calculating ETs under PSP3.¹⁷
40. The above resolution provides TasWater with a higher ET than they could reasonably expect based on current water usage (as evidenced above) and their own calculations from Mr Lehner (referred to above) during periods free from any significant leaks and thus benefits TasWater financially whilst allowing me to resolve this matter once and for all and not continue to waste my time and energy dealing with this matter.

Failure to Provide a Water Leak Remission

41. As noted above and evidenced in the attached letters, TasWater are aware of several separate leaks in underground piping at the Property which have grossly inflated our water bill for which we have obtained no benefit.
42. There is no legislation that governs TasWater providing water leak remissions, but they have advised that they will only provide a single water leak remission for a property during one period of ownership of same. Given they provided a remission for the Property several years ago relating to a minor leak completely separate from those that have occurred since, they are refusing to provide any further remissions. Their basis for such refusal is that as it is not a "regulated activity", they are "...unable to offer further assistance or discounts on water usage charges"¹⁸.
43. The above is of course not correct. As it is not regulated, it is at their discretion as to whether they choose to offer further discounts on water usage and they simply don't want to in this instance in order to try and gouge the maximum monetary reward from a customer. Of course if they were a traditional private company in a competitive environment, decisions like this would cause myself and others to move to alternative providers that due to the complete lack of any goodwill.
44. Whilst I may have been more willing to forgive this lack of customer service in more normal circumstances, given the effort and expense that we have been put to in dealing with the variety of issues caused by TasWater, including but not limited to:
- (a) the costs of engaging building surveyor Mr Magnus and plumber Mr Keene to provide reports to try appease TasWater (which they mostly ignore);

¹⁷ Annual water consumption (Q3 to Q3) x Discharge Factor (0.75) / Previous year's annual residential water consumption

¹⁸ Letter from TasWater dated 30 July, 2019

- (b) the lack of effort made to understand and resolve the issues faced by us over many years which has caused significant stress and anxiety;
- (c) the lack of goodwill shown by TasWater to date generally in respect to all matters; and
- (d) the attempt to double charge us for our misfortunes by both charging for the water that was subject to the leak and increasing ETs to exorbitant levels which do not coincide with *Price and Service Plan 3* ("PSP3") nor represent the discharge we are placing through sewerage system.

We are therefore unwilling to drop this matter of dispute.

- 45. For Completeness, please note that once this matter is resolved, we are planning on unearthing the entire 32mm underground pipeline and relaying it with the correct modern piping to ensure no further leaks occur. The existing piping was laid by the Council many decades ago and the plastic agricultural piping they used was not to the correct specification for town water pressure which in turn has lead to the sporadic leaks we have been experiencing in recent years.¹⁹ The nature of the undersized piping was of course not known to us at the time of purchase back in 1999. Our future intensions surrounding the piping have been explained to TasWater in previous correspondence along with providing evidence of same from our Plumber, Mr Stephen Keene.²⁰
- 46. As you will appreciate, this exercise of unearthing hundreds of metres of piping to replace it with modern piping designed to take town pressure is an expensive task for a small business and thus by TasWater trying to charge us over \$10,000.00 per year in excessive charges (100mm fixed charges, excessive ET charges and not providing water remissions on water subject to leaks), it has been preventing us from putting money aside to attend to this task which would resolve two of the matters of complaint herein for the future.

Chain of last 12 months of Correspondence

- (a) Transfer, Survey and Schedule of Easements for the Property;
- (b) Letter to TasWater (Attn: Ms Juliet Mercer) dated 5 April, 2019;
- (c) Letter to TasWater (Attn: Ms Katie Hooper) dated 15 May, 2019;
- (d) Letter from TasWater (Ms Sophie Rowlands) dated 17 May, 2019;
- (e) Letter from TasWater (Mr Geoff Purchase) dated 20 May, 2019;
- (f) Letter to TasWater (Attn: Ms Sophie Rowlands) dated 7 June, 2019;
- (g) Letter from TasWater (Mr Jeremy Morse) dated 30 July, 2019;
- (h) Letter to TasWater (Attn: Mr Jeremy Morse) dated 13 September, 2019;

¹⁹ Letter from plumber Mr Stephen Keene, annexure "P" in Letter to TasWater dated 15 May, 2019.

²⁰ Letter to TasWater dated 15 May, 2019 p8.

- (h) Letter from TasWater (Mr Jeremy Morse) dated 13 December, 2019; and
- (i) Letter to TasWater (Attn: Mr Jeremy Morse) dated 27 December, 2019;

Regards,

A handwritten signature in black ink, appearing to be 'Graeme Gilmour', with a stylized, looped initial 'G'.

Graeme Gilmour

Taswater

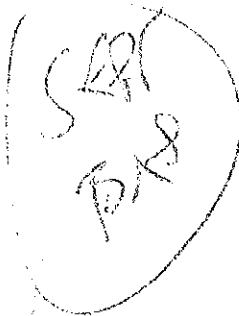
Tasmanian Water & Sewerage Corporation Pty Ltd
ABN 47 162 220 653



C C & G A Gilmour
Beach Retreat Tourist Park
30b Old Bass Highway
WYNYARD TAS 7325



054
1000092
R1_343



Page 1 of 2
enquiries@taswater.com.au
www.taswater.com.au
GPO BOX 1393 HOBART TAS 7001

Statement no. 7411796335

Issued 17/08/2019

Charge details

SERVICE ADDRESS **INSTALLATION NUMBER**
30B Old Bass Highway WYNYARD TAS 440028098

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 100mm (01/07/19-30/09/19)	\$2,143.50
Full Fixed Sewerage Charge x 15.4 ETs* (01/07/19-30/09/19)	\$2,533.92
	\$4,677.42

VARIABLE USAGE CHARGES

Variable Water Charge (1 kL @ \$1.062/kL)
(01/07/19-29/07/19)

TOTAL NEW CHARGES

\$4,678.48

Tax Invoice

Account no.	240028098
Overdue	\$45,579.64
Total due	\$50,258.12
Due date	23/09/2019

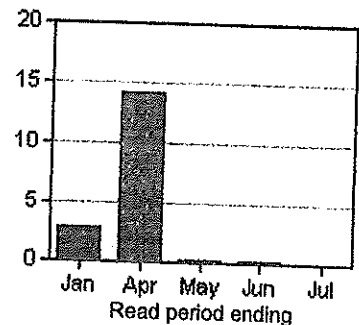
Overdue amount payable immediately

Account summary

Last Account	\$46,148.36
Paid / Adjusted	-\$568.72
Balance	\$45,579.64
New Charges	\$4,678.48
Total Due	\$50,258.12
GST	\$0.00

Your usage

Average daily usage in kilolitres



Current av. daily use: 0.03 kL/day
Current av. daily cost: \$0.03/day

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact

Payment slip

Account no.	240028098
Overdue	\$45,579.64
Total due	\$50,258.12
Due date	23/09/2019

See over page for payment options

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ABN 47 162 220 653



C C & G A Gilmour
Beach Retreat Tourist Park
30b Old Bass Highway
WYNYARD TAS 7325



054
1002064
R1_4627

Statement no. 7411804529

Issued 04/09/2019

Charge details

SERVICE ADDRESS

30B Old Bass Highway WYNYARD TAS

INSTALLATION NUMBER

440028098

Tax Invoice Indicates taxable supply

ACCOUNT NO.	240028098
DEBT CODE	\$45,579.64
TOTAL DUE	\$50,258.12
DATE DUE	9/10/2019

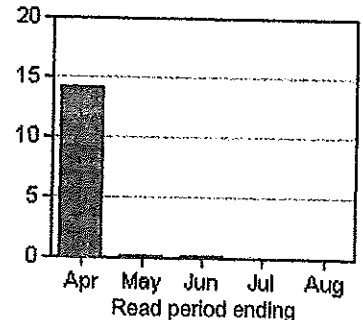
Overdue amount payable immediately

Account summary

Last Account	\$50,258.12
Paid / Adjusted	\$0.00
Balance	\$50,258.12
New Charges	\$0.00
Total Due	\$50,258.12
GST	\$0.00

Your usage

Average daily usage in kilolitres



Current av. daily use: 0 kL/day

Current av. daily cost: \$0.00/day

If paying in person please keep account intact

Payment slip

ACCOUNT NO.	240028098
DEBT CODE	\$45,579.64
TOTAL DUE	\$50,258.12
DATE DUE	9/10/2019

See over page for payment options

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ABN 47 162 220 653



C C & G A Gilmour
Beach Retreat Tourist Park
30b Old Bass Highway
WYNYARD TAS 7325



054
1000060
R1_195

Statement no. 7411814975

Issued 01/10/2019

Charge details

SERVICE ADDRESS	INSTALLATION NUMBER
30B Old Bass Highway WYNYARD TAS	440028098

VARIABLE: USAGE CHARGES

Variable Water Charge (2 kL @ \$1.062/kL) (31/08/19-30/09/19)	\$2.12
--	--------

TOTAL NEW CHARGES	\$2.12
--------------------------	---------------

Tax Invoice indicates taxable supply

Account no.	240028098
Revenue	\$50,258.12
Expenses	\$50,260.24
Due date	5/11/2019

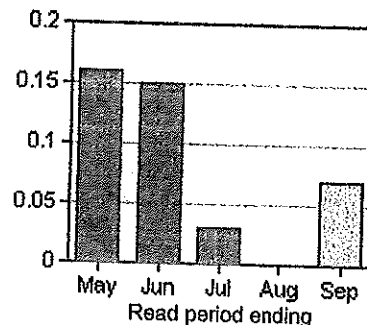
Overdue amount payable immediately

Account summary

Last Account	\$50,258.12
Paid / Adjusted	\$0.00
Balance	\$50,258.12
New Charges	\$2.12
Total Due	\$50,260.24
GST	\$0.00

Your usage

Average daily usage in kilolitres



Current av. daily use: 0.07 kL/day

Current av. daily cost: \$0.07/day

If paying in person please keep account intact

Payment slip

Account no.	240028098
Revenue	\$50,258.12
Total due	\$50,260.24
Due date	5/11/2019

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ABN 47 162 220 653



C C & G A Gilmour
Beach Retreat Tourist Park
30b Old Bass Highway
WYNYARD TAS 7325



054
1000671
R1_1525

Statement no. 7411840010

Issued 11/11/2019

Charge details

SERVICE ADDRESS	INSTALLATION NUMBER
30B Old Bass Highway WYNYARD TAS	440028098

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 100mm (01/10/19-31/12/19)	\$2,143.50
Full Fixed Sewerage Charge x 15.4 ETs* (01/10/19-31/12/19)	\$1,902.25
	\$4,045.75

VARIABLE USAGE CHARGES

Variable Water Charge (7 kL @ \$1.062/kL) (01/10/19-29/10/19)	\$7.43
--	--------

TOTAL NEW CHARGES	\$4,053.18
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Tax Invoice Indicates taxable supply

Account no.	240028098
Balance	\$50,260.24
Balance due	\$54,313.42
Due date	2/01/2020

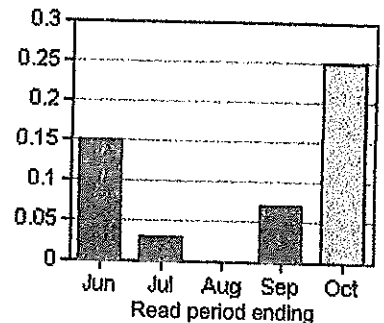
Overdue amount payable immediately

Account summary

Last Account	\$50,260.24
Paid / Adjusted	\$0.00
Balance	\$50,260.24
New Charges	\$4,053.18
Total Due	\$54,313.42
GST	\$0.00

Your usage

Average daily usage in kilolitres



Current av. daily use: 0.25 kL/day

Current av. daily cost: \$0.26/day

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact

Payment slip

Account no.	240028098
Overdue	\$50,260.24
Balance due	\$54,313.42
Due date	2/01/2020

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ABN 47 162 220 653



C C & G A Gilmour
Beach Retreat Tourist Park
30b Old Bass Highway
WYNYARD TAS 7325



054
1000044
R1_101

Statement no. 7411863855

Issued 21/12/2019

Charge details

SERVICE ADDRESS	INSTALLATION NUMBER
30B Old Bass Highway WYNYARD TAS	440028098

VARIABLE USAGE CHARGES

Variable Water Charge (119 kL @ \$1.062/kL) (30/10/19-18/12/19)	\$126.38
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TOTAL NEW CHARGES	\$126.38
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Tax Invoice Indicates taxable supply

Account no.	240028098
Amount	\$50,260.24
Tax (incl GST)	\$54,439.80
Due date	29/01/2020

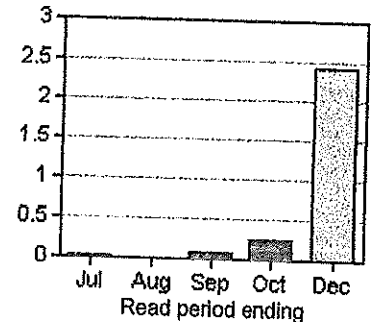
Overdue amount payable immediately

Account summary

Last Account	\$54,313.42
Paid / Adjusted	\$0.00
Balance	\$54,313.42
New Charges	\$126.38
Total Due	\$54,439.80
GST	\$0.00

Your usage

Average daily usage in kilolitres



Current av. daily use: 2.43 kL/day
Current av. daily cost: \$2.53/day

If paying in person please keep account intact

Payment slip

Account no.	240028098
Amount	\$50,260.24
Tax (incl GST)	\$54,439.80
Due date	29/01/2020

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Juliet Mercer
General Manager Corporate and Community Relation

5 April, 2019

Dear Ms. Mercer,

30b Old Bass Highway, Wynyard – 100mm Meter Dispute/Complaint

I refer to your letter of 25 March 2019 addressed to Mr & Mrs Gilmour. I am their son and have been requested to take carriage of this dispute on their behalf as a result of the emotional and physical toll this decade long saga has been having on them. To this end I attach a suitable authority for your file. I will now be the point of contact for your office insofar as this dispute is concerned.

There are three separate issues of dispute/complaint that I seek to be addressed, namely the charges being levied for the 100mm meter, the calculation of ETs and the Claim for damage to gardens. For the purposes of keeping matters separate and avoiding any confusion, I will write to you separately in relation to each of those disputes/complaints starting with this correspondence, which solely relates to the 100mm meter issue.

You are no doubt aware that the dispute surrounding the 100mm water meter placed on my parents property at 30b Old Bass Highway ("the Property") and operated as a Tourist Park has had a history that dates back to Cradle Mountain Water days and has involved the input of senior politicians to try and achieve some fairness, including Bryan Green MP back in 2012.

Having read your abovementioned letter, it is only appropriate to provide you with a concise summary of the issues that have arisen in this matter that has caused us to get to this point. This will ensure there is no confusion between any parties and will provide a concise summary of matters to assist a court presiding over this matter in the future should we get to that point.

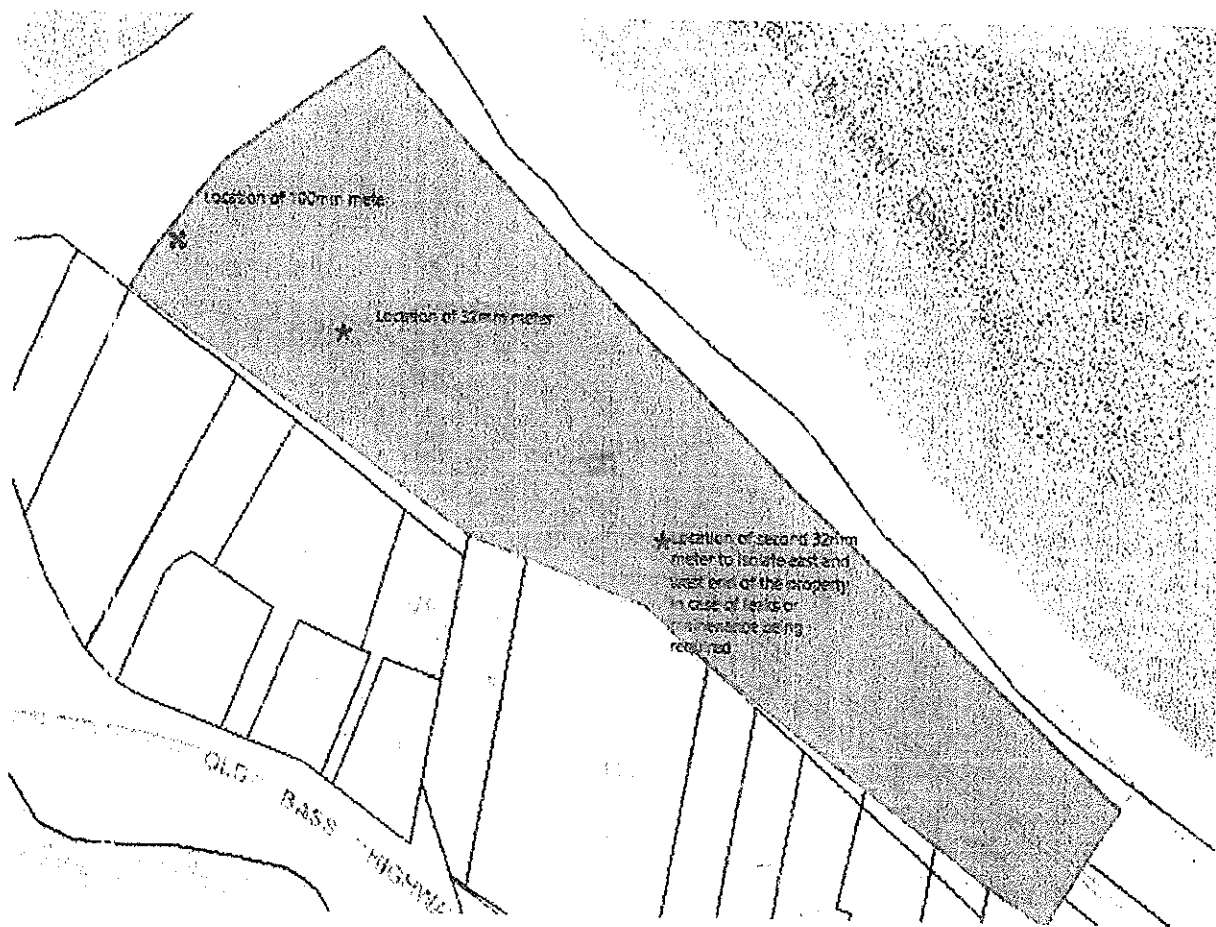
The 100mm meter

A comprehensive summary of how a 100mm meter ended up on the Property was summarised in written form by way of letter dated 7 February 2019 and brought to the attention of both Shane Crawford and Paul West being the current General Managers of both the Waratah/Wynyard Council and Devonport Council respectively. This letter is attached and marked "A" for your review.

Attached and marked "B" is a copy of the relevant Waratah/Wynyard Council Minutes for their meeting held on 17 November 2003 ("the Minutes") which is referred to the abovementioned correspondence to Mr West and Mr Crawford.

Suffice to say, the 100mm meter was unlawfully placed on the Property by the Waratah/Wynyard Council back in or around 2004 as consent was not obtained for the location of this meter nor future responsibility for same as referred to in the Minutes. As expressly indicated in the Minutes, the decision to locate the 100mm meter on the Property was done as a cost saving measure for the Council. Recognising the fact that the location of the 100mm meter was done solely to benefit the Waratah/Wynyard Council, whilst Council were the relevant water authority, charges rendered for the Property were for a single existing 32mm meter only.

To further assist your understanding of the Property, I have produced below a diagram of the meters on the Property with the assistance of the government mapping tools from *The List* (Image "1").

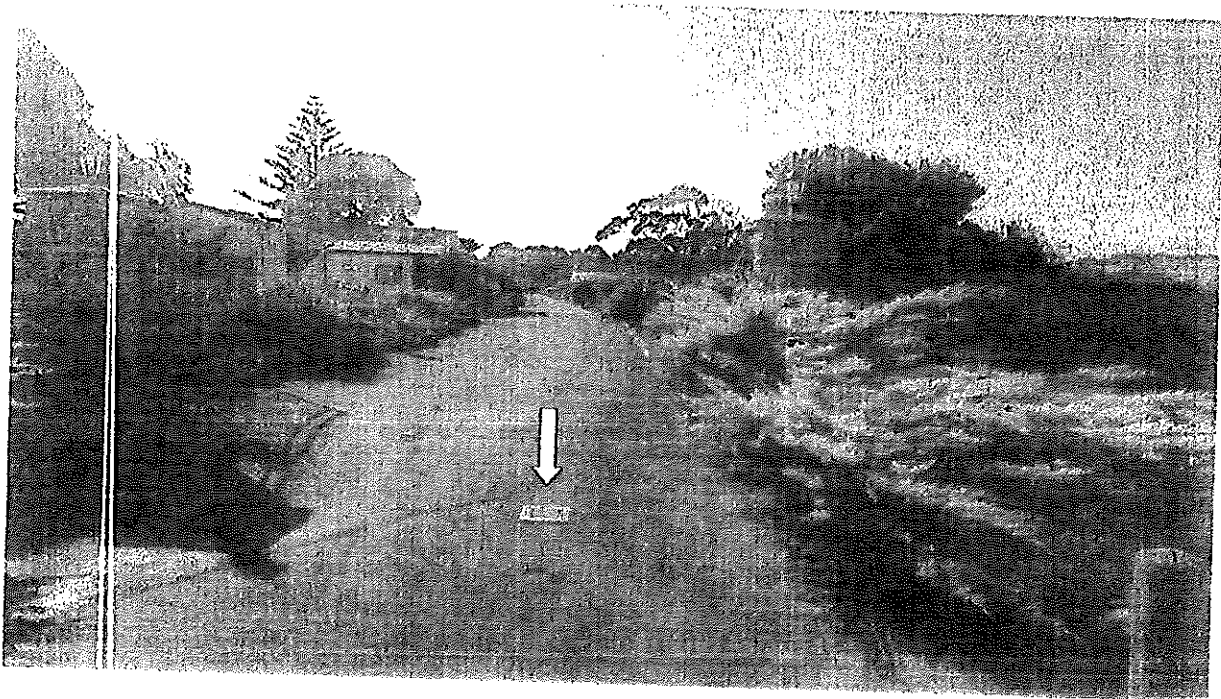


You will note from the above that the 100mm meter as located in or around 2004 sits approximately 1 metre inside the Property. Within approximately 2 metres from the 100mm meter, the water is directed into a 32mm pipeline and then passes through the 32mm meter approximately 10m thereafter. This 32mm meter and associated infrastructure has existed in its current location longer than Mr & Mrs Gilmour have owned the Property and it is the supply from this 32mm meter and pipeline that feeds all those water needs of the Property. The second 32mm meter sits adjacent to the office on the Property and acts as nothing more than an extra shut off point to isolate the eastern end of the Property from the west in case maintenance is required or otherwise to maintain water flow to part of the property should a leak occur. Importantly for TasWater, the usage of water through the property can be reconciled by comparing the two 32mm meters with that of the 100mm meter. Providing no leaks exist, and the Tasmanian Fire Service have not accessed the 100mm pipeline for public purposes, the meter readings of the 100mm meter and 32mm meters will reconcile. I will return to this point later.

Over the course of the various communications Mr & Mrs Gilmour have had with both Cradle Mountain Water and now TasWater, attempts have been made to obtain a copy of the plans for the pipelines both 32mm and 100mm that exist on the Property. For reasons known only to the Waratah/Wynyard Council, no plans were made or kept by the Council for the exact locations of the pipelines that traverse the property. Ironically, the only plan for the pipelines that exist was drawn

by Mr Gilmour himself for the Council's benefit when various building works were carried out on the Property in the early to mid 2000s and that is to the best of Mr & Mrs Gilmour's knowledge, the only plan Council can produce to evidence the location of these pipelines. As a result of this, it is known that the 100mm pipeline and associated meter downsizes to the 32mm pipe within approximately 2 metres of the 100mm meter. This means that every single structure on the property that is fed water as well as all taps, are fed from the 32mm pipeline and associated meter.

The 100mm meter is only present to service a 100mm pipeline that runs the length of the property that is present purely for fire fighting purposes. That is for Taswater's purposes, a dedicated fire fighting pipeline. This pipe was laid under the road on the Property as part of the normal infrastructure for a Council road when the road was a public one and long before the Council developed the Caravan Park which Mr & Mrs Gilmour later purchased in 1999. An example of the access points which tap into this pipeline for fire fighting purposes that currently exist on the Property is produced below (note: this particular access point is outside the Property by approximately 2m which also evidences that this pipeline was never present for the benefit of Mr & Mrs Gilmour but rather as a piece of public infrastructure (image "2")).



Important to the discussion is to recognise that there is NO legal requirement for Mr & Mrs Gilmour to have such a pipeline for fire fighting purposes. To this end, most recently at the request of the Waratah/Wynyard Council, Building Safety Consultant, Mr Robert Whiteway from the Tasmania Fire Service has confirmed that whilst Tasmanian Fire Service would like to keep the 100mm pipeline for firefighting purposes for dwellings that back onto the Property as it is a resource, it nevertheless is not requirement under the National Construction Code (NCC). Attached hereto and marked "C" is a copy of this email from Mr Whiteway to Building Surveyor, Mr Stefan Deverall dated 13 March 2019. The irony of course is that by TasWater insisting Mr & Mrs Gilmour must pay for the 100mm meter, access to Tasmanian Fire Service can be refused and any attempt by Tasmanian Fire Service to access the 100mm pipeline can legally result in such members being forcefully ejected from the

Property' and brought up on civil and criminal charges for 'trespass'. Clearly this is not the intended consequence any party desires.

The point is therefore, that the 100mm pipeline and meter is neither needed nor legally required and is recognised by all parties (including the Tasmanian Fire Service) as a piece of public infrastructure. There is therefore no lawful argument in which it can be reasoned that Mr & Mrs Gilmour as private land owners, ought to be responsible for such costs. To view it from another perspective, what other private land owner pays for a 100mm meter and pipeline that the landowner neither uses, nor legally requires and is only present for the public good? The question is of course rhetorical.

You refer in your abovementioned letter to the correspondence dated 14 December 2018 and note that you are satisfied that the advice provided therein was 'accurate'. Unfortunately, there have been a number of inaccurate assumptions and inaccuracies in correspondence from both Cradle Mountain water and now TasWater that led to the letter of 14 December 2018 and has unfortunately led you into error in your letter of 25 March 2019. Whilst those errors ought to now be clear from the above, I nevertheless take the opportunity to summarise those errors from each of those pieces of correspondence that have been relied upon in this matter for the review:

Letter from Julie Poole dated 5 December 2012

- (a) Ms Poole correctly identifies that the 100mm service that runs under the Property is a dedicated fire service. Unfortunately, Ms Poole was not aware (and neither did she avail herself of such advice) as to the fact that there is no legal requirement for the Property to have such infrastructure for the purpose of operating as a Tourist Park.
- (b) As a result of the incorrect assumption noted at (a) above, Ms Poole deems it appropriate to charge 25% of the normal 100mm pipeline cost and as such, this error has resulted in Mr & Mrs Gilmour paying your office for this amount which has caused you to be unjustly enriched.
- (c) Ms Poole refers to the existence of a 20mm bypass for a domestic water usage. In actuality, the domestic pipeline that services the property is 32mm with the associated meter as referred to above. This has been the case since before Mr & Mrs Gilmour purchased the Property in 1999.
- (d) Ms Poole notes that: "It is important to note that there should be no water usage registered through the 100m meter given that it is a dedicated fire service". This statement was particularly troubling to Mr & Mrs Gilmour likewise as it is myself. As noted above, the 100mm meter sits approximately 1m inside the Property, the Bypass referred to by Ms Poole is 32mm and occurs within approximately 2m of the 100mm meter itself. That means the water to the Property has to travel a distance of approximately 3m along the 100mm pipeline whilst inside the Property before it is bypassed through the 32mm pipeline and meter to service the Property with all of its water requirements. This raises three points of interest:
 - (i) All water that enters the Property must flow through the 100mm meter. The way to determine if water has been used from the 100mm dedicated fire fighting pipeline is to compare water flow through the 100mm meter with that of the 32mm meter. If the two figures are identical, then there has been no use of the dedicated fire fighting 100mm pipeline.

- (ii) Whilst Ms Poole has led herself into error due to not understanding the water pipeline and meter infrastructure that exists on the Property, such apparent complexity would not have existed had the Council not unlawfully installed the 100mm meter on the Property back in or around 2004; and
- (iii) It evidences the fact that Ms Poole as a senior employee of the then Cradle Mountain Water had no understanding as to how the water pipelines and meters operated on the Property which has led her into error. It should be noted that this is despite my instructions, that Mr & Mrs Gilmour had stringently explained all of the above to Ms Poole and Bryan Green MP who also did his best to explain the situation to Ms Poole. A copy of Mr Green's letter to Mr & Mrs Gilmour dated 18 December 2012 is attached hereto and marked "D".

Letter from Andrew Kneebone dated 3 September 2012

- (a) Mr Kneebone refers to existence of a 100mm meter connection and a 20mm connection on the Property. This is incorrect. As noted above, the connection that directly supplies all water requirements to the Property is a 32mm meter. This has always been the case.
- (b) Reference is made to Greg Marshall and Leigh Walton having inspected the Property and determined that there should be a 32mm connection and a 50mm connection for fire service. Several concerns arise from this statement:
 - (i) There already existed a 32 mm connection not 20mm as Mr Kneebone refers to; and
 - (ii) What Mr Walton and Mr Marshall 'think' the Property should have for fire fighting purposes and what it legally requires to operate are two very distinct positions. With the greatest of respect, neither myself nor a Court have any concern for such thought bubbles when dealing with decisions regarding infrastructure. The reality as noted above by Mr Whiteway is that there is no legal requirement for either a 50mm or 100mm connection nor any connection specific connection at all for fire fighting purposes in order for Mr & Mrs Gilmour to legally operate their business on the Property. This position has been repeatedly stated to Cradle Mountain Water and later, TasWater over the last decade.
 - (iii) Juxtaposed to the apparent authority to determine pipeline and meter requirements for the Property held by Mr Walton and Mr Marshall, the final paragraph on page 1 of the correspondence states: "...you would need to provide written evidence from the building surveyor or the Tasmanian Fire Service in order to reduce the connection size".

Letter from Hayley Jaggard dated 14 December 2018

There is little further that needs to be added by way of comment that hasn't already been pointed out in relation to the previous letters referred to above. Suffice to say, the reference to the matter having been "fully investigated" really meant nothing more than relying on incorrect information and assumptions from the various others that wrote to Mr & Mrs Gilmour since the water authority moved to Cradle Mountain Water and later, TasWater.

This then takes us to your correspondence from 25 March 2019 whereby reliance on all previous correspondence as providing accurate information has led to an incorrect understanding of the matter and in turn, an incorrect conclusion insofar as charges are concerned.

Recent Events

As referred to annexure "A" attached, Mr & Mrs Gilmour, Mr Shane Crawford (General Manager of Waratah/Wynyard Council), Mr Paul West (previous General Manager of Waratah/Wynyard Council at all relevant times in 2003 and 2004 and current General Manager of Devonport Council) and myself had a meeting at the Property at 8am on 8 February 2019. At that time the minutes from the Council meeting on 17 November 2003 were referred to and in accordance with annexure "A" herein, the unlawful way in which Council went about placing the 100mm meter on the Property which has directly caused the problems with billing from your office was affirmed. The result being that through Mr Crawford, the Waratah/Wynyard Council agreed at its expense to engage a building surveyor to carry out an investigation and report to determine the water needs of the Property. Benchmark Building Surveyors Pty Ltd was engaged in Wynyard and Mr Stefan Deverell had carriage of the file. Within the last fourteen days, Mr Deverell has verbally confirmed with me that he has no issue with the 32mm meter and associated pipeline being more than sufficient to supply the Property for all its business requirements. Mr Deverell sought comment from the Tasmanian Fire Service in relation to the 100mm pipeline from which Mr Robert Whiteway gave comment in relation to same in his email of 13 March 2019 as attached as annexure "C" herein. As a result of the findings, Mr Deverell has referred the matter back to Council with an indication that he does not believe a report is required in relation to this matter given his findings in relation to the existing 32mm pipeline and the comment from Mr Whiteway. If you would like further information or wish to confirm the above, I encourage you to contact Mr Deverell on 6442 3600 or stefan@benchmarkbuildingsurveyors.com.au.

The Legal Position

You are governed by several pieces of legislation, the main two acts being the *Water and Sewerage Industry Act 2008* ("the 2008 Act") and the *Water and Sewerage Corporation Act 2012* ("the 2012 Act").

Section 6 of the 2012 Act provides the Principal of Objectives of the Corporation. I replicate that provision below:

6. Principal objectives of Corporation

(1) The principal objectives of the Corporation are as follows:

- (a) to efficiently provide water and sewerage functions in Tasmania;*
- (b) to encourage water conservation, the demand management of water and the re-use of water on an economic and commercial basis;*
- (c) to be a successful business and, to this end –*
 - (i) to operate its activities in accordance with good commercial practice; and*
 - (ii) to deliver sustainable returns to such of its members as are councils; and*

(iii) to deliver water and sewerage services to customers in the most cost-efficient manner.

(2) Each of the principal objectives of the Corporation is of equal importance (emphasis added).

By virtue of the *Water and Sewerage Industry (Customer Service Standards) Regulations 2009* ("the Regulations") your office is at all times to act under a Code in respect to both disputed accounts, customer complaints and dispute resolution. The mandatory requirements to be included in such Code(s) are provided for in r27 & 32 of the Regulations. This is important to note, as unlike most other commercial operations in a non monopolistic environment where codes of conduct often act as nothing more than an outward attempt to be a good corporate citizen, TasWater is legally required to comply with such legislated aspects within its Codes and policies.

The *Complaints, Enquiries and Disputes Management Policy* approved by the Board on 27 June 2018 provides the following statements relevant to the handling of complaints which by virtue of the legislation must be adhered to:

- (a) TasWater is dedicated to understanding and addressing systemic issues raised from any customer complaints through a continual process of improvement;
- (b) TasWater will provide the reasons for a decision made by TasWater in resolving a complaint, by including details of the legislative or policy basis for the reasons, where appropriate;
- (c) TasWater will restrict its ability to recover an amount of monies which is in dispute, until the dispute has been resolved.

TasWater also adopts the Australian Standard on complaints handling (AS ISO 10002:2006) including:

- (i) Fairness – ensuring complaints are dealt with in an equitable, objective and unbiased manner;
- (ii) Accountability – monitoring complaints and responses to ensure regular process improvement; and
- (iii) Continuous Improvement – considering each complaint as an opportunity to improve.

The crux of this dispute relates to the charging by TasWater for the 100mm meter on the Property. There can be no dispute that the Regulator's meter pricing as considered periodically reflects the costs of providing water services to a property, including the cost of maintaining and upgrading infrastructure (see for example *TasWater "Our pricing explained..."*; 2015 – 16).

Likewise, when it comes to dedicated Fire Service charges, the associated meter costs are charged at the equivalent of "...25 per cent of the relevant target fixed water charge to take account of the fact that the service is called into use infrequently".

Applying the above points back to the dispute at hand you will note following in relation to the existing 100mm meter:

1. It was originally placed on the Property unlawfully and in direct conflict with the resolution of Council in their meeting on 17 November 2003;

2. The 100mm meter and pipeline is neither desired by Mr & Mrs Gilmour and nor is it legally required. This is juxtaposed to the various industrial operations around the state that rely on 100mm – 250mm meters and pipelines to service large water needs and legislatively required fire services such as internal sprinkler systems;
3. None of the infrastructure on the property is serviced directly from the 100mm pipeline, rather all structures are serviced from the 32mm pipeline and associated meter.
4. The 100mm pipeline only exists under the Property as result of historical decisions to place same in that location when it was a public road and the Property was not operating as a tourist park let alone owned by Mr & Mrs Gilmour.
5. The 100mm pipeline is for all intents and purposes dedicated for fire services as Mr & Mrs Gilmour cannot draw from same. It is therefore only of benefit to the Tasmanian Fire Service for the general public good.
6. All commercial structures for human habitation are required by law to have fire extinguishers present within them and be in date. This includes cabins and motel units.
7. TasWater could at any point have chosen to block the 100mm pipeline immediately after it branches into the 32mm pipeline, and if it desired, remove the 100mm meter in line with good commercial practice to maintain customer satisfaction, alleviate any future maintenance concerns regarding the 100mm pipeline on the Property and thus ensuring delivery of services to the Property in a cost efficient manner. Such steps I would argue best align with the principal objectives outlined in s6 of the 2012 Act referred to above.

For TasWater to maintain its position regarding charging for the 100mm meter, it would have to convince itself that it is both morally and legally correct to charge for such a meter in light of all the above issues.

The contract derived from the legislation that exists between the Corporation and the customer, in this case Mr & Mrs Gilmour, insofar as the 100mm is concerned either never existed as a result of Mr & Mrs Gilmour deriving no benefit from the 100mm meter, or has been frustrated as a result of the unlawful actions of the Council back in 2004 in placing the 100mm meter onto the Property despite the fact there was no private need or lawful requirement for same. Similarly the fact that the 100 mm pipeline service was created for and continues to be nothing more than a piece of public infrastructure for the public good, means that there is a very strong argument that any such contract between TasWater and Mr & Mrs Gilmour insofar as the 100mm meter is concerned either never existed or must be set aside (see *Pavey & Matthews Pty Ltd v Paul* (1985) 162 CLR 221 per Mason, Wilson, Deane & Dawson JJ).

My review of this file from the information retained by Mr & Mrs Gilmour suggests that the payments they have made for water and sewerage services over the last decade since the authority over the water servicing the Property left the hands of the Waratah/Wynyard Council exceeds what they ought to have paid, which ought to have been limited to the charges associated with a 32mm meter only. To this end, I have sought full costings both historical and current for a 32mm service from your customer service officer Ms Sarah Rush in order to carry out this analysis. If indeed the costs, as it appears from my cursory glance at the charges levied against Mr & Mrs Gilmour's property, exceed that which ought to have been paid for the service provided, a claim for unjust enrichment will arise.

The Solution

There is no doubt that the review conducted by yourself and your office to date has been based on incorrect information provided by others within your organisation and has therefore rendered any review inaccurate. In accordance with the 2008 Act, the 2012 Act, the Regulations and the *Complaints, Enquiries and Disputes Management Policy* all referred to above, there is little choice other than for this matter to be reviewed de novo by either yourself or another appropriately qualified employee of TasWater. The end result being a finding that Mr & Mrs Gilmour's fixed charges ought not exceed the costs of a single 32mm meter on the basis that there does not exist any lawful contract between the Corporation and Mr & Mrs Gilmour for a 100mm meter.

Once the above conclusion is reached, a full audit of charges rendered to the Property ought to be undertaken by TasWater with a view to determining the amount either Mr & Mrs Gilmour owe your office, or more likely, the amount of reimbursement your office is required to make to Mr & Mrs Gilmour for years of incorrect charging due to the failure to understand both the size of the meters and the way in which the meters and pipelines existed on the Property.

If for some reason, you disagree with the proposed course outlined above, at a minimum I require a detailed list of reasons for your decision enunciated in your letter of 25 March 2019 including details of the legislative and policy basis for those reasons as required by legislation and expressly referred to in TasWater's *Complaints, Enquiries and Disputes Management Policy*.

As a final note, I am acutely aware of the underfunding that is currently plaguing the Ombudsman's office at the present time which is leading to decisions now often taking years to be handed down. Clearly such delay is not desirable from the perspective of either TasWater or Mr & Mrs Gilmour. As such, I would encourage you to contact either Amber Cohen or Evan Hughes as Principals of litigation at your legal counsel, Rae & Partners in Launceston for a legal Opinion. By way of full disclosure, I am a former Senior Associate at Rae & Partners and during my time at same, I appeared as Counsel on several TasWater matters before the Magistrates Court of Tasmania and provided advice to others working under me in relation to your files.

If you would like to have a meeting regarding this matter, I am happy to do so. Whilst a meeting on site at the Property would seem the most logical location to allow you or any other employee of the Corporation to better understand the layout of the water infrastructure, I am also happy to travel to you for your convenience. Alternatively, if you would prefer telephone contact, please do not hesitate to contact me on the below number.

I look forward to hearing from you.

Kind Regards,



Ryan Gilnour

Ph: 0417 582 622

"A"

The General Manager
Waratah Wynyard Council
Attention: Shane Crawford
By email only: scrawford@warwyn.tas.gov.au

General Manager
Devonport Council
Attention: Paul West
By email only: Paul.West@....

Dear Sirs,

Taswater Dispute – 30b Old Bass Highway, Wynyard

I refer to our upcoming scheduled meeting due to take place at my property, 30b Old Bass Highway, Wynyard, "Beach Retreat Tourist Park" on 8 February 2019 at 8am.

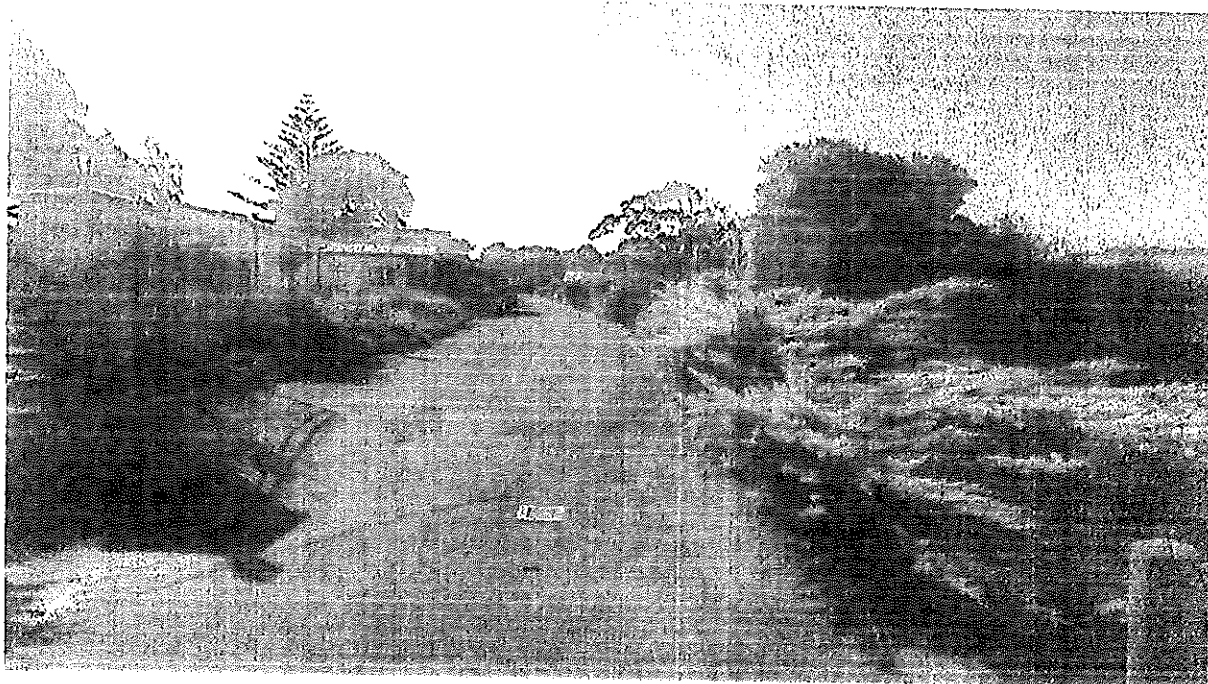
In preparation for the above, I take this opportunity to provide a summary of the issue at hand from its beginning through to the date of this correspondence as I appreciate that this issue has had a lengthy history.

1. Prior to my ownership of the Caravan Park, the site was a Crown Lease with the Park being operated by the then Wynyard Council.
2. The Wynyard Council (as it then was) leased the Caravan Park to a private operator in 1993. That operator was Mr Rod Walker.
3. Council has had a rising sewer main located in the Caravan Park since approximately 1960.
4. In July 1998 the now Waratah/Wynyard Council agreed to the sale of the Caravan Park and the conversion of the land to 'freehold' ownership.
5. In September 1998 my wife and I purchased the Caravan Park.
6. At the time of purchase and to date, the park is serviced by a 32mm pipe/meter
7. In June 2001 a planning permit was issued requiring a proposed dwelling to be constructed and was to be clear of the Council's mains.
8. On 6 November 2003 the Waratah-Wynyard Council tabled an Agenda for their 17 November 2003 meeting which included a recommendation that the Council:
 - (a) Determine to budget for the relocation of the sewer rising main and water main from within PID 7164067 in the 2004/2005 financial years budget. It was suggested that the cheapest way the Council could deal with the issue was to install a 100mm meter
 - (b) Request that the owners of the property to **formally agree** (emphasis added) that they are prepared to accept ownership and future responsibility for the 100mm water main within the property once the work is completed.
9. On 17 November 2003 the Waratah-Wynyard Council held its meeting whereby it was resolved that the Council:
 - (a) Determine to budget for the relocation of the sewer rising main and water main within PID 7164067 in the 2004/2005 financial years budget;
 - (b) Request the owners of the property to formally agree that they are prepared to accept ownership and future responsibility for the 100mm water main within the property once the work is completed (please see 928.5 *Sewer Rising Main – Wynyard Caravan Park from Council Minutes of 17 November 2003 as attached*).

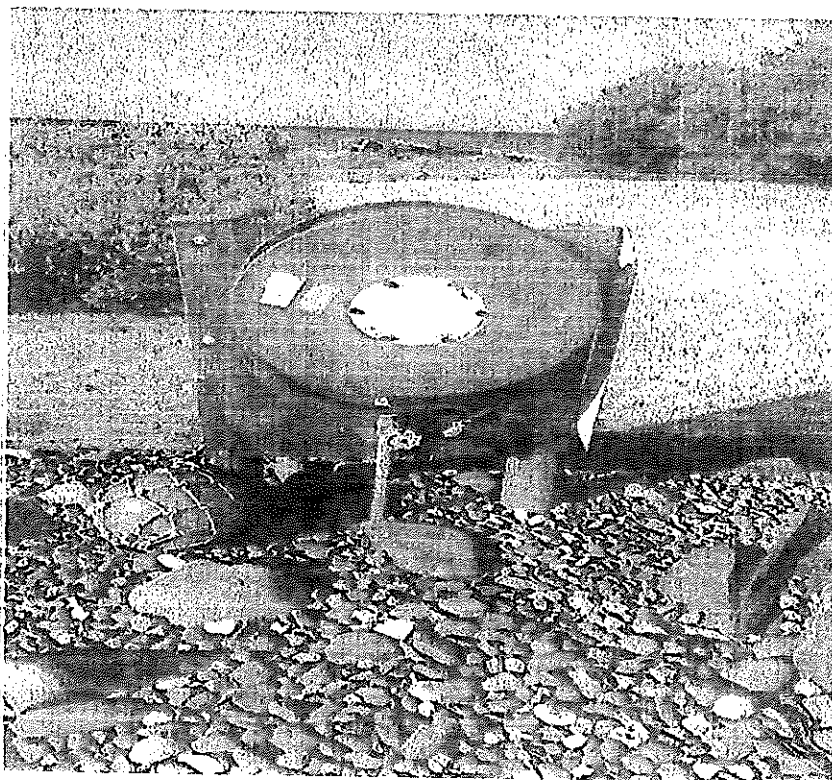
10. Despite resolving to attend to the above, the Council never requested we agree in any manner whatsoever as to taking responsibility for the 100mm water main/meter within the property. We only became aware of these minutes whilst undertaking research in preparation for discussing this matter with you on 8 February 2019.
11. At no time whilst water was managed by the Waratah Wynyard Council were we ever charged for the 100mm water meter/main which reflects:
 - (a) The fact that we never agreed for the 100mm water meter to be placed on our property whereupon it was installed in or around 2004 without providing us any prior notice or even informing us they would be entering our property to undertake this task;
 - (b) That we never agreed (formally or otherwise) to accept ownership and future responsibility for the 100mm meter; and
 - (c) That we did not require such a large water main/meter to operate our small caravan park business.
12. Since Cradle Mountain Water/TasWater came into existence we have been continually fighting as to the necessity for the 100mm meter.
13. for reasons unclear to me, Cradle Mountain Water/TasWater have failed to acknowledge the chain of events which were outside of my control that lead to the 100mm main being placed on our property despite the fact that both back in 2003 and now, we do not require the 100mm water meter they wish to charge us for. The result being, they are looking to be provided with further evidence to support our position in order to maintain the status quo back when the Council were in charge of water infrastructure namely charging for the 32mm meter.

I now take the opportunity to outline the layout of our property and why the 100mm meter was no doubt installed back in 2004:

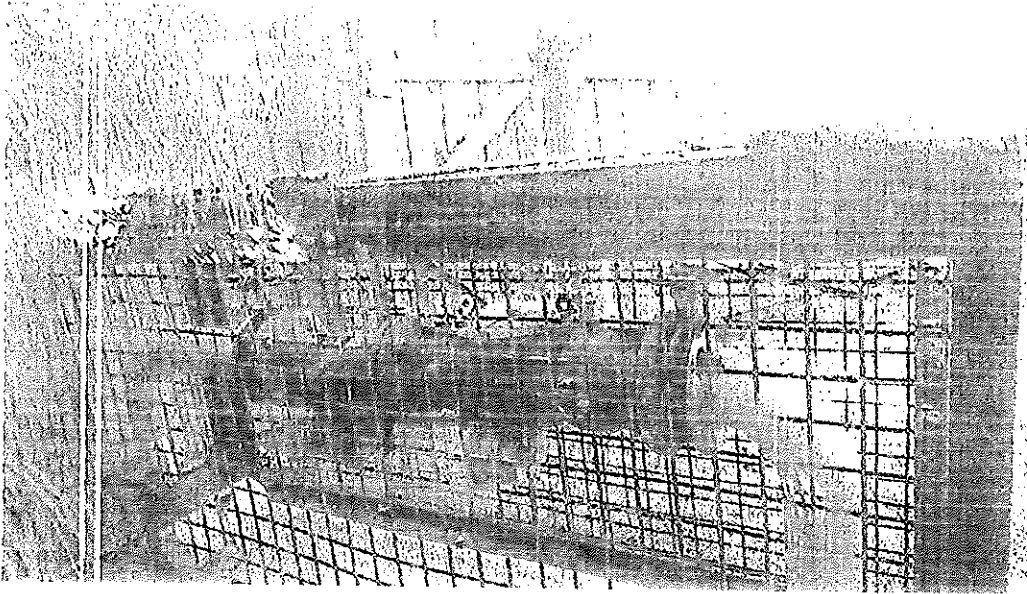
- a) As noted above, the property was originally Crown land and operated by the Council.
- b) The road into the property was originally a public road. As a result, the 100mm pipe was a normal piece of road infrastructure to service the town. The below photo depicts the front of the property with access to the pipeline for the fire brigade.



- c) Fire Hydrants were placed along the road by either the Crown or Council which are not used, have not been used in over 15 years and importantly, are not required under legislation for the operation of a Caravan Park. The below photo depicts one of the disused hoses.

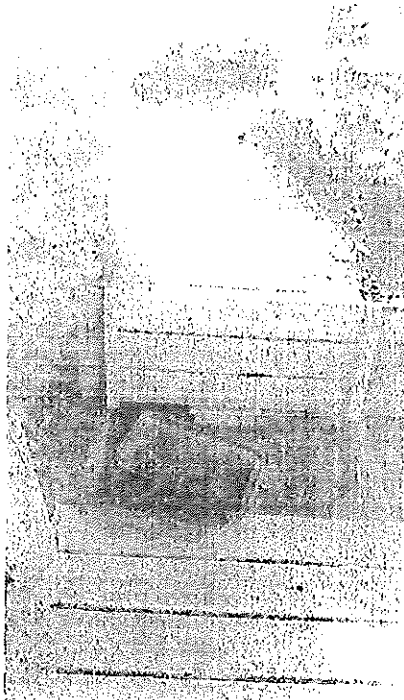


- d) The 100mm meter situated at the rear for the property and referred to earlier is depicted below.



e) The above 100mm meter and pipe solely services the fire hydrants and disused fire hoses and is isolated from the rest of the pipelines servicing our business and personal property. Its shut off point is depicted.

f) One of the 32mm shut offs situated half way down the property is depicted below.



g) For convenience for the Caravan Park to isolate areas should leaks or plumbing work be required, there are two 32mm meters feeding the property which service our business and our home. The first of these is depicted above and the second is below.



- h) Our quarterly water usage has remained stable since purchasing the property back in 1999. In the last quarter the total water usage for the property was 272 kL. This is consistent with the fact we do not require a 100mm main/meter and is also our largest quarter of the year as we have the greatest occupancy during this period. During winter the business shuts down for 4 months and therefore water usage is negligible. This supports why we have never been charged for this infrastructure that we neither requested nor needed.
- i) We seek from you your support regarding the accuracy of the information provided in this correspondence to evidence the historical background to this matter given your specialised prior knowledge. If you are agreeable, I would see that information contained in this correspondence be formulated into a statutory declaration for you to sign, which I can then provide to TasWater when I meet with them in the coming weeks to put my position forward once again.
- j) As it stands:
 - (i) We do not earn sufficient profits to pay for such an excessively large piece of infrastructure that is the 100mm meter;
 - (ii) Legally we would ought not have to pay for the fixed costs associated with the 100mm meter as to do so would be to unjustly enrich TasWater.
 - (iii) It would be morally reprehensible to charge a small business operator with limited draw on the water system for a piece of infrastructure they neither requested, consented to or needed in the first place.

Your support in relation to the above would be greatly appreciated so that I can resolve this matter once and for all.

I look forward to talking to you both on Friday morning.

Regards,

Graeme Gilmour

7 February 2019

928.5 SEWER RISING MAIN – WYNYARD CARAVAN PARK

To:	Council
Reporting Officer:	Director Engineering Services
Responsible Manager:	General Manager
File Reference:	7164067
Date:	6 th November 2003

1. Recommendation***That Council:***

- (a) determine to budget for the relocation of the sewer rising main and water main from within PID 7164067 in the 2004/2005 financial years budget.*
- (b) request the owners of the property to formally agree that they are prepared to accept ownership and future responsibility for the 100mm water main within the property once the work is completed.*

2. Summary

Recently Council received a development application for works at the Wynyard Caravan and Cabin Park.

During the assessment process it was found that Council has a 375mm diameter sewer rising main which runs through the property and is in fact located directly under the current works as well as well as numerous other buildings on site.

Within the property boundary Council also has a 100mm water main. This main is located under the internal road and under a section of camping area at the western end.

3. Background

The caravan park site was originally a Crown Lease with the Park being operated by the then Wynyard Council. Council leased the Caravan Park to a private operator in 1993.

Council has had a sewer rising main located in this area since approximately 1960.

In April 1993 the then Council granted approval for several backpacker accommodation units to be developed on the lease. The units were originally intended to be relocatable but over time have become fixed in their location. It would be possible to relocate the majority of them but time would be an issue in an emergency situation.

In June 1993 Council received complaints from residents to the south in relation to the blocking of their views and sun. In November 1993 Council agreed to a setback variation in relation to some of the backpacker units. In February 1995 Council agreed to two more units being installed.

In July 1998 Council agreed to the sale of the caravan park and the conversion of the land to freehold ownership. A condition of the conversion was that the existing services were to be accurately defined and easements created for them.

In June 2001 a planning permit was issued requiring a proposed dwelling to be constructed was to be clear of the Council's mains.

In October 2003 another application was submitted to build a dwelling over the main. Council officers consulted with the developers and advised them of the situation and risks associated with a development in this area.

4. Statutory Requirements

SEWERS AND DRAINS ACT 1954

Buildings not to be erected without consent over sewers or drains shown on deposited map

39. (1) *Where plans of a building or an extension of a building are, under any Act, submitted to a local authority and it is proposed to erect the building or extension over a sewer or drain that is shown on the map required by section thirteen, the local authority shall reject the plan unless it is satisfied that, in the circumstances of the particular case, it may appropriately consent to the erection of the proposed building or extension, either unconditionally or subject to compliance with such requirements as may be specified in the local authority's consent.*
- (2) *A building, the plans of which are not required under any Act to be submitted to a local authority for approval, shall not be erected over or within one metre of the space vertically above a sewer or drain without the prior approval of the local authority.*

- (3) *An approval under subsection (2) of this section may be given either unconditionally or subject to compliance with such requirements as may be specified in the approval.*
- (4) *Any question arising under this section between a local authority and a building owner which is not referable to the Building Appeal Board, may, on the application of the building owner, be determined summarily by two or more justices in petty sessions.*

5. Finances

The estimated cost to relocate the sewer rising main is \$120,000.

The estimated cost to convert the 100mm water main to an internal service is approximately \$5,000.

Both the above amounts will have to be budgeted for in the 2004/2005 financial year with the works being planned to occur when the least amount of loading is on the rising main.

6. Discussion

The main is approximately 1.5m deep and has an alignment that is not parallel with any features or boundary. The main is asbestos cement, which is very brittle. On an average day 2,800 kilolitres pass through the pipe and on a wet day the flow is in the vicinity of 7,000 kilolitres.

The relocation works will pose some issues in relation to the environment, one issue being the alignment and the other being effluent discharge when there is a cut over from the old sewer rising main to the new sewer rising main. These issues will need to be considered during the design phase of the project.

There is a water main that loops through from the yacht club through the caravan park and then along the foreshore and under the road connecting back into a water main on the Old Bass Hwy. Currently there are three water meters located within the property that Council read and service. It is possible to isolate the main to the property so that it can be utilised as a private fire service by installing a valve on the eastern end. This would then allow Council to install a single water meter to the property and therefore provide future savings. These works would not affect any other users.

7. Risk

If there were a substantial break in the sewer rising main it is possible that this would pose a significant risk to life and property.

Additionally if the water main were to break there also could be significant risk.

8. Conclusion

It is recommended that Council allocate funds to allow the relocation of the sewerage and mains in the 2004/05 budget.

This report is presented to Council for consideration.

CRS:- FRENCH/RANSLEY

That Council:

- (a) determine to budget for the relocation of the sewer rising main and water main from within PID 7164067 in the 2004/2005 financial years budget.*
- (b) request the owners of the property to formally agree that they are prepared to accept ownership and future responsibility for the 100mm water main within the property once the work is completed.*

CARRIED

"C"

From: Whiteway, Robert (TFS) <Robert.Whiteway@fire.tas.gov.au>
Sent: Wednesday, 13 March 2019 2:34 PM
To: Stefan Deverell <stefan@benchmarkbuildingsurveyors.com.au>
Cc: NorthWestRegion (TFS) <NorthWest.Region@fire.tas.gov.au>
Subject: RE: 30b Old Bass Highway, Wynyard - Beach Retreat Caravan Park

Hi Stefan,

Thankyou for the information. This appears enough to make a decision on and unnecessary to make a site visit.

I have consulted with our guys here and as we assumed yesterday the hydrants and hose reels were installed as part of the planning permit from the council after direction was sought from the Chief Officer. (Indicative of the era rather than this particular property).

The placement of the hydrants seems ideal and operationally acceptable for the Fire Service.

Although not a requirement of the NCC there is a need to provide protection for the property. In this situation where there is considerable distance to cover, and several properties in and surrounding the caravan park it would be less than ideal to remove this valuable resource.

It also appears that the hydrants have supported the expansion of buildings to the site though previous approvals.

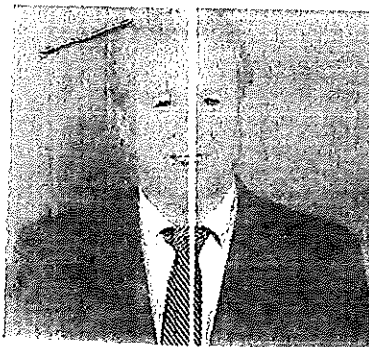
Therefore in this instance the Chief Officer would not support the removal of hydrants or hose reels.

I hope this has provided enough advice, however please don't hesitate to contact me if you require more information.

Kind regards

Robbie Whiteway
Consultant
Building Safety
Tasmania Fire Service
Service | Professionalism | Integrity | Consideration
15 Three Mile Line, Burnie | GPO Box 1015 Burnie Tasmania 7320
Phone (03) 6477 7218 | Mobile 0419 879 653
robert.whiteway@fire.tas.gov.au | www.fire.tas.gov.au

For trim pls 3/C/0037 In my office



Bryan Green MP

Labor Member for Braddon

Lab

GETTING THINGS DONE

Mr Graeme Gilmour
Beach retreat Tourist Park
30B Old Bass Highway
WYNYARD TAS 7325

"D"

18 DEC 2012

Dear Graeme

Thank you for taking the time to meet with me Friday 30th November to discuss your Cradle Mountain Water (CMW) fixed service charges which you advised have gone from \$1,200 to \$15,000 per year.

I have sought advice through the Executive Manager of Cradle Mountain Water, Julie Poole, regarding your charges and have received a response as well as a copy of her correspondence sent to you regarding the charges. A copy of this is enclosed.

The advice I have received is that the dedicated fire service rate had not been applied to your 100mm water service charge which resulted in you receiving incorrect billing advice. As outlined in the letter these charges have been reversed and reapplied at the correct rate and a new statement sent to you.

As a result the correct billing for the 2012/2013 period is a total of \$2,954.81 and \$3,132.02 for the 2014/2015 period. The letter also outlines CMW conducted an audit of your connections last year and have outline the outcome of this in previous correspondence, as well as the letter attached.

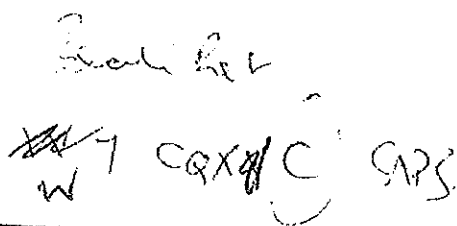
I hope this has answered your query and would like to wish you all the best for 2013. If I can be of any further assistance with any other matter, please do not hesitate to contact my office.

Yours sincerely


Bryan Green MP
MEMBER FOR BRADDON

Enc.

8601 2247 444


w 7 CQX/C SPS



AUTHORITY

To:- TasWater

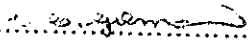
We, **Graeme Alain Gilmour (DOB: 20/01/1951)** and **Cheryl Christine Gilmour (18/12/1951)**, both of 30b Old Bass Highway, Wynyard in Tasmania, authorise and direct you to release to my son, Ryan Jamie Gilmour of 33 Jones Street, Burnie in Tasmania ("my son"), any and all personal information that he may request and we provide you our full authority to discuss our account(s) with my son as if he were us.

A copy of this authority is a valid authority.

Dated this 5th day of April 2019



.....
Graeme Alain Gilmour



.....
Cheryl Christine Gilmour

Tasmania

Boundary Fences Act 1908

NOTICE OF OBJECTION TO MAKING AN EXISTING FENCE RABBIT-PROOF

TO:

Under section 10 of the *Boundary Fences Act 1908*, I give you notice that I object to your proposal to make the existing fence between our respective lands rabbit-proof on the following grounds:

DATED at on

.....
(Signature of person giving notice) (Print name of person giving notice)

Signed in the presence of:

.....
(Signature of witness)

.....
(Print name of witness)

.....
(Address of witness)

Tasmania

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Signed in the presence of:

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(Signature of witness)

.....
(Print name of witness)

.....
(Address of witness)

Katie Hooper
Collections Team Leader
TasWater

15 May, 2019

By email only: Katie.Hooper@taswater.com.au

Dear Ms Mercer,

30b Old Bass Highway, Wynyard – ET Complaint and request for reassessment

I refer to my letter dated 5 April, 2019 and emailed to your office on 10 April, 2019.

You will recall in the abovementioned correspondence, I referred to there being three issues I intended to raise with respect to 30b Old Bass Highway, Wynyard in Tasmania ("the Property"). One of those issues was with respect to the calculations adopted by TasWater and applied to billing for sewerage charges, namely the calculation of Equivalent Tenements ("ET"). I now take this opportunity to address that complaint on behalf of Mr & Mrs Gilmour and in doing so request a recalculation of the amounts applied to such calculations from their inception in or around the year 2012/13 to date.

The use of ETs in the calculation of sewerage pricing in Tasmania resulted from the Immediate Pricing Objectives which were considered in the 2011/12 financial year and implemented in the following year. Initially calculations for ETs for use in this state were heavily influenced by methodology outlined in the Water Services Association of Tasmania (WSAA) Sewerage Code as the Corporation moved to full cost recovery. One problem that arose through the influence of the WSAA appeared to be the use of the "Standard Sewer Service" equating to one residential connection for sewerage referred as an ET. The WSAA defined a "Standard Water Service" to be a single 20mm connection for water and larger connection sizes would be a multiplier of that number. I reproduce the WSAA multiplier table below:

Size (mm)	20	25	30	32	40	50	65	75	80	100	150	200
Multiplier	1.00	1.56	2.25	2.56	4.00	6.25	10.56	14.06	16.00	25.00	56.25	100.00

The problem with the WSAA when it came to Caravan Parks was that they placed 'Caravan Parks' under "Appendix E – Priorities for Review and Update of Standard ET figures" as they recognised the uncertainty in the way NSW was calculating ETs when it came to this type of business which often involves more than one type of accommodation and variable occupancies. They concluded with: "As with any series of guidelines, it is important for each end-user to apply appropriate local knowledge and characteristics to any adopted formulae. Knowing some of the variables involved in the different development categories means that individual Councils can collect and apply their own data to the local context".¹

¹ Section 64 Determinations of Equivalent Tenements Guidelines, May 2009, NSW Water Directorate Incorporated, p6

The WSAA recognised occupancy as a major factor in influencing variability in domestic sewerage loadings and that residential and non residential sewerage loadings do not exhibit significant variability.²

Clearly the NSW position was accepted in Tasmania, noting the reference in TasWater's own *Price and Service Plan 3* ("PSP3") that: "A number of major customers stated that the basis for ET calculations was not valid and those offering accommodation felt the applicable ET rate for accommodation rooms did not reflect the seasonal nature of accommodation".³

PSP3 defined an ET as a measure of the load a property places on the sewerage system whereby one ET is considered to be the annual sewerage discharge from a single residential dwelling under dry weather flows which is set by PSP3 at one ET being 200kL per annum. All calculations for premises other than residential dwellings are then based off this standard rate.⁴ I will return to this point insofar as how it applies to the Property later.

9.7.3 of the PSP3 notes the steps TasWater to undertake in calculating ETs. I reproduce same below:

1. Combined data sources such as site visits, local knowledge, Google maps, direct customer contact and council data, are used to ascertain the property type and associated property attributes. ETs for identified non-residential customers (eg commercial, industrial, primary industry, and community services) are determined based on their respective category and, within that category, the other relevant parameters including number of beds or rooms, number of staff and students, and gross floor area and/or applicable amenities

2. Attribute a default one (1) ET to all identified standard residential customers

3. Identify customers who have a property within serviced land that is not physically connected to TasWater's infrastructure but which has the ability to connect. These customers are charged at 60 per cent of the standard ET rate for a residential dwelling.

Furthermore the list of categories listed in Appendix 13 of PSP3 is stated to be: "not exhaustive and we have the ability to assess the number of ETs on a case by case basis if the circumstances warrant it"⁵ (emphasis added)

The takeaway points of relevance from both the WSAA and PSP3 are that TasWater is to strive to achieve:

- Consistency in its approach to sewerage charges;
- Fairness in its sewerage charging, particularly within industries; and
- That in order to ensure there is both consistency and fairness in sewerage charges given that PSP3 is not exhaustive and the variables that exist in the real world, TasWater has considerable discretion in all instances to ensure a fair result is reached for both the customer and the Corporation.

² *Ibid* at pp10 & 16

³ Price and Service Plan 3, 1 July 2018 to 30 June 2021, Tasmanian Water & Sewerage Corporation, p20

⁴ *Ibid* at p284

⁵ *Ibid* at p128

Case Studies

In an attempt to achieve consistency and fairness in sewerage charges within particular industries, Appendix 13 of PSP3 provides a schedule of ET rates for various property uses. Before turning to the way in which ETs are calculated for the Property under Appendix 13, it is of relevance to consider some examples of tourist accommodation providers in the local area which are in direct competition with Mr & Mrs Gilmour to observe the ETs being charged for the same or similar type property uses

LeisureVille Holiday Centre

LeisureVille Holiday Centre operates a very similar business to that of Mr & Mrs Gilmour and operates just 3km from the Property. You would say they are the most direct commercial competition to Mr & Mrs Gilmour, albeit on a larger scale. They offer the following:

- (a) 9 Villas
- (b) 14 Cabins
- (c) 22 Caravan and camping Sites including several en suite sites
- (d) 1 indoor pool open to guests and the public
- (e) 1 indoor spa open to guests and the public
- (f) A toilet and shower block for both males and females

Mr & Mrs Gilmour are in close contact with the proprietor of this business and once considered purchasing this operation and have thus at one point been privy to their financial records. Their turnover is conservatively estimated to be double that of Mr & Mrs Gilmour's operation. Being an accommodation provider, it goes without saying that when it comes to tourist parks, there is a direct correlation between turnover, the number of guests and amount of water used. That is, the higher the turnover, the greater the occupancy achieved and in turn, the greater the water usage and thus the greater the sewerage discharge.

Attached and marked "A" is a copy of their most recent account from your office dated 16 April 2019. The following information can be observed:

- (i) 9.9 ET's charged for sewerage; and
- (ii) Total variable water usage was 677 kL
- (iii) Average daily use 8.16kL

Attached and marked "B" is a copy of their account issued on 18 January, 2019. The following information can be observed:

- (i) 9.9 ET's charged for sewerage; and
- (ii) Total variable water usage was 724kL
- (iii) Average daily use 8.27kL

Taking this 6 month period as a sample size, the average of same equates to 8.22kL per day.

The Waterfront Wynyard

The *Waterfront Wynyard* operates approximately 500m from the Property and Mr & Mrs Gilmour are on close terms with the proprietors of this business and thus have some inside knowledge of same. They offer the following to customers:

- (a) 26 motel rooms;
- (b) 1 managers unit.
- (c) 1 Restaurant; and
- (d) 2 number of luxury Pods (built using shipping containers and capable of housing up to six people in each.

The *Waterfront Wynyard* has a yearly occupancy of around 80% and thus has a significantly higher number of customers than Mr & Mrs Gilmour. Needless to say, this is reflected in their water usage.

Attached and marked "C" is a copy of their account issued on 11 January, 2019. The following information can be observed:

- (i) Total ET's charged was 13.2; and
- (ii) Total variable water usage was 523kL;
- (iii) Average daily use 5.68kL

Attached and marked "D" is a copy of their account issued on 11 October, 2018. The following information can be observed:

- (i) Total ET's charged was 13.2; and
- (i) Total variable water usage was 403kL
- (ii) Average daily use 4.48kL

Attached and marked "E" is a copy of their account issued on 12 July, 2018. The following information can be observed:

- (i) Total ET's charged was 13.2
- (ii) Total variable water usage was 446kL
- (iii) Average daily use was 5.01kL

Attached and marked "F" is a copy of their account issued on 17 April, 2018. The following information can be observed:

- (i) Total ET's charged was 13.2;
- (ii) Total variable water usage was 751kL;
- (iii) Average daily use was 8.44kL.

Taking this 12 month period as a sample size, the average water usage equates to 5.90kL per day.

The Property

Mr & Mrs Gilmour have owned *Beach Retreat Tourist Park* situated at 30b Old Bass Highway, Wynyard in Tasmania for approximately twenty years. They have the following located on their property:

- (a) 6 permanent resident cabins;
- (b) 5 tourist cabins
- (c) 3 motel style units
- (d) 22 caravan and camping sites (no en suite sites).
- (e) 1 toilet and shower block

It is also important to note that the business *Beach Retreat Tourist Park* operates 9 months of the year with it being closed during July, August and September due to the low number of tourists visiting the North West coast at this time. Occupancy rates for all accommodation offered (excluding the 6 permanent resident cabins) during the 9 months of operation each year hovers around 12% and this is continuing to decline as a result of Tasmanian local councils continuing to support free camping at all locations on the North West coast and the unregulated accommodation market created by *Airbnb*. With steadily declining occupancy rates, in turn comes a reduction in water use on the Property and therefore reduce load being placed on the sewerage system. The fact there have been spikes in water usage through the meters in recent years is only due to leaks within the underground pipe work as a result of what we are now aware is agricultural piping servicing the Property which is substandard for handling mains pressure and was installed by Council long before Mr & Mrs Gilmour purchased the Property and was of course not something that any due diligence through the use of pre purchase inspections et cetera could have discovered prior to purchasing same.

I will now turn to the recent accounts rendered by TasWater for the Property.

Attached and marked "G" is a copy of your account issued on 18 January, 2019. The following information can be observed:

- (i) 15.4 ET's charged for sewerage; and
- (ii) Total variable water usage was 255kL.
- (iii) Average daily use was 2.87kL

Attached and marked "H" is a copy of your account issued on 29 October, 2018. The following information can be observed:

- (i) 15.4 ET's charged for sewerage; and
- (ii) Total variable water usage was 17kL
- (iii) Average daily use was 0.18kL

Attached and marked "I" is a copy of your account issued on 4 September, 2018. The following information can be observed:

- (i) 15.4 ET's charged for sewerage; and

(ii) Total variable water usage was 1kL.

(iii) Average daily use was 0.01kL

Attached and marked "J" is a copy of your account issued on 19 April, 2018. The following information can be observed:

() 24.8 ET's charged for sewerage; and

(ii) Total variable water usage was 24kL.

(iii) Average daily use was 0.26kL

Attached and marked "K" is a copy of your account issued on 20 January, 2018. The following information can be observed:

(i) 24.8 ET's charged for sewerage; and

(ii) Total variable water usage was 5kL.

(iii) Average daily use was 0.06kL

Attached and marked "L" is a copy of your account issued on 21 October, 2017. The following information can be observed:

(i) 24.8 ET's charged for sewerage; and

(ii) Total variable water usage was 495kL.

(iii) Average daily use was 5.62kL

Note: the significant variation was due to a underground water leak which was located by Mr & Mrs Gilmour without any assistance from TasWater as to identifying the anomaly.

Attached and marked "M" is a copy of your account issued on 27 July, 2017. The following information can be observed:

(i) 24.8 ET's charged for sewerage; and

(ii) Total variable water usage was 163kL.

(iii) Average daily use was 2.14kL

Attached and marked "N" is a copy of your account issued on 12 May, 2017. The following information can be observed:

(i) 24.8 ET's charged for sewerage; and

(ii) Total variable water usage was 867kL.

(iii) Average daily use was 8.85kL

Note: the significant variation was due to a underground water leak which was located by Mr & Mrs Gilmour without any assistance from TasWater as to identifying the anomaly.

There have therefore been significant variations in water usage on the Property as a direct result of numerous water leaks in underground pipes which often go unnoticed for large periods of time as

the water is absorbed by the soil. The true extent of the leak only becomes known when your office conducts a meter reading.

Thankfully, this issue was given some consideration by your then Customer Liaison Officer Mr Brendon Lehner with his conclusions placed into writing in a letter dated 24 April, 2017 which is attached and marked "O". His analysis found that the daily average normal water use was 2.55kL.

Applying the Equivalent Tenement Assessment Process pursuant to clause 9.7.3 of PSP3

Using the TasWater derived normal daily average of 2.55kL we are able to compare water usage against the average figures derived above for Mr & Mrs Gilmour's direct competitors and observe the following:

1. Compared to *LeisureVille*, Mr & Mrs Gilmour use just 31.02% of water. That is, *LeisureVille* use 3.22 times more water than Mr & Mrs Gilmour at the Property.
2. Compared to *The Waterfront Wynyard*, Mr & Mrs Gilmour use just 43.22% of water. That is, *The Waterfront Wynyard* use 2.31 times more water than Mr & Mrs Gilmour at the Property.
3. *LeisureVille* have 23 separate buildings used for accommodation, 9 of which are villas which are capable of housing 4 or more persons. Mr & Mrs Gilmour have a total of 14 buildings on the Property with only 3 of these properties capable of housing 4 or more persons. Therefore in terms of structures linked to the water and sewerage system, *LeisureVille* have 64% more buildings on their property connected to the water and sewerage system.
4. *The Waterfront Wynyard* have 29 separate accommodation units on their property, each of which is connected to the water and sewerage system. This represents 107% more accommodation structures connected to TasWater infrastructure for water and sewerage than the Property.

Despite the above large discrepancy in water usage, the number of pieces of infrastructure and the number of rooms (all of which are to be considered under clause 9.7.3 of PSP3), the average ETs Mr and Mrs Gilmour have been charged to date has been calculated by me from the Transaction Summary provided by your office in *Microsoft Excel* format last month. I attach this electronic document to this correspondence where you will see my calculations in red. Using that as evidence of ET charges rendered from 2009 to date, it is evident that the lowest ET ever charged for the Property was 11.6 and the highest was 24.8. Moreover, extrapolating those figures evidences an average ET charge for the Property of 16.49 (rounded to two decimal places). This is an extraordinarily high amount compared to others operating in this sector as evidenced by the above two examples. Indeed, comparing this average to what both *LeisureVille* and *The Waterfront Wynyard* are currently paying, namely, 9.9 ETs and 13.2 ETs respectively, we see that Mr & Mrs Gilmour are paying 66.56% more ETs for sewerage than *LeisureVille* and 24.92% more ETs than *The Waterfront Wynyard*.

Whilst it ought be clear from the above that the ET pricing adopted for Mr & Mrs Gilmour is clearly at odds with what is being charged for other tourist parks and accommodation providers, it is necessary to turn to the correspondence Mr & Mrs Gilmour have received from your office when they have questioned your unilateral determinations to increase the ETs associated with their

property over the years and the way ETs are calculated for accommodation providers, namely caravan parks under AS01 of PSP3.⁶

Pursuant to both AS01 and referred to in letters from your office dated 31 August, 2015 and 1 July 2016, the number of ETs applicable to the Property is calculated using the formula:

$$\frac{\text{Annual water consumption (Q3 to Q3)} \times \text{Discharge Factor (0.75)}}{\text{Previous year's annual residential water consumption}}$$

The problem faced with using this formula is that Mr & Mrs Gilmour have been battling underground leaking pipes for years and your office is well aware of this. This is due to the existing pipe being made of plastic agricultural piping and being unsuitable for town pressure. This pipe should not have been used for underground pressure piping in the first place. Of course the piping was laid by the *Waratah Wynyard Council* many decades ago, being unknown to Mr & Mrs Gilmour when they purchased the Property and not being an item that would be picked up on any reasonable pre-purchase inspection.

When the water leaks occur, they occur in the piping which sits approximately 1m underground and with the location of the underground water piping on the Property being just 20m or so from the beach, the sandy soil surrounding the pipe drains the leaking water away from the surface such that the leaks are not visible on the Property as they do not display themselves as a 'bubbling' type surface leak. For confirmation regarding these leaks from an expert, attached and marked "P" is correspondence from plumber Stephen Keene confirming his attendances on the property and his observations.

Suffice to say, Mr & Mrs Gilmour have suffered the misfortune of paying excess water charges over the years for water which they received no benefit from and thus to apply grossly inflated water readings to determine the calculation of ETs on a yearly basis leads to a completely irrational outcome. I say irrational as not only is it inherently unfair to charge increased ETs based on Mr & Mrs Gilmour's misfortune for which they have already been stung for increased water charges, but perhaps most importantly, the loss of water through leaking pipes cannot be observed to the naked eye and places no stress on the sewerage system whatsoever given the water does not leave the ground under the Property, let alone exit into any sewerage infrastructure. With ETs being a measure of the load a property places on the sewerage system, there is no rational or legal argument I can envisage whereby water that is leaked and thus places no load on the sewerage system can be used to inflate a person's future sewerage charges.⁷

With the above standard ET calculation formula causing issues, there are as I see it, three potential ways in which ETs can be more accurately assessed in this scenario:

- (i) Using an alternative method of ET calculation as provided for under AS01 of PSP3;
- (ii) Using the Daily average water usage in kL identified by your Mr Brendon Lehner in his letter of 24 April 2017 and referred to earlier in this correspondence noting that 1 ET is equivalent to 200kL per annum; Or⁸

⁶ Ibid at p286

⁷ Ibid at p284

⁸ Ibid

- (iii) Using periods of time when leaks did not occur or are not believed to have occurred and extrapolating figures for a yearly period to most accurately determine what water usage has actually occurred during any given 12 month period.

Using an Alternative Method of Calculation of ETs under AS01 of PSP3

AS01 of PSP3 provides an option of charging 0.45 ETs per self contained cabin and 0.5 units per toilet/shower. If you apply this to the number of buildings/cabins on the Property you derive a figure of 8.3 ETs using the following calculation.

$$\begin{aligned}\text{Total ETs} &= 14 \text{ cabins } (14 \times 0.45) + 2 \text{ toilets } (2 \times 0.5) + 2 \text{ showers } (2 \times 0.5) \\ &= 6.3 + 1 + 1 \\ &= 8.3\end{aligned}$$

If you contrast a figure of 8.3 ETs for the Property in comparison to 9.9ETs for *LesiureVille* and 13.2 for *The Waterfront Wynyard* using the information provided above, clearly a figure of 8.3 ETs is the most reasonable calculation of ETs you are able to achieve if strictly adhering to AS01 of PSP3. Of course your office is not required to stringently adhere to AS01 given the ability you hold to assess the number of ETs on a case by case basis where the circumstances warrant it.⁹

Taking the Average Daily Use in kL as per Mr Brendon Lehner

$$\begin{aligned}\text{ETs} &= \frac{\text{average daily water use (kL)} \times 365 \text{ days}}{200\text{kL per annum}} \\ &= \frac{2.55 \times 365}{200} \\ &= 4.65 \text{ ETs}\end{aligned}$$

If one ET is defined as being 200kL under PSP3¹⁰ and water use is the best means of determining the load that is placed on the sewerage system, then based on TasWater's own figures, this calculation provides the most accurate representation of the number of ETs that ought to be charged in this instance.¹¹

Extrapolating more accurate water usage figures from periods without leaks

To take a random period of time as an example

Ref No	Period	Water Usage (kL)
1	11/02/15 – 04/05/15	848
2	21/07/15 – 19/10/15	1171
3	20/10/15 – 21/01/16	2600
4	21/01/16 – 22/04/16	3397
5	23/04/16 – 25/07/16	2379
6	26/7/16 – 21/10/16	287
7	21/10/16 – 25/01/17	561

⁹ Ibid at p128

¹⁰ Ibid at p284

¹¹ Ibid at pp127-128

8	25/01/17 – 4/5/17	867
9	4/05/17 – 20/07/17	163
10	20/07/17 – 18/10/17	495
11	18/10/17 – 15/01/18	5
12	15/01/18 – 17/04/18	24
13	17/04/18 – 30/06/18	1
14	12/07/18 – 17/10/18	17
15	17/10/18 – 15/01/19	255
16	15/01/19 – 09/04/19	1177

The following can be observed from the above:

- (a) A tourist park does not have quarterly variances in water use between 1kl and 3397kl. To this end, I am instructed that Mr & Mrs Gilmour have informed you of the various quarters where leaks were clearly present in the underground water piping, including but not limited to those quarters seen at reference numbers 2,3,4, 5 & 16 above.
- (b) Given parameters involved in the calculation of ETs for a property includes site visits, local knowledge, direct customer contact and council data, you either know or are deemed to know that tourism in the North West of Tasmania is particularly seasonal with very low numbers of tourists during the colder months. You can also safely accept that the numbers of persons opting for a caravan or camping holiday during those same colder months are negligible. With that in mind, taking the above sample of water usage, it is difficult to observe any period which accurately reflects genuine water usage from which to extrapolate more accurate long term figures.
- (c) The particularly low number of kl used in the quarters seen in reference numbers 11 through 14 inclusive are also concerning but for the reason that these numbers are so low that they cannot possibly be an accurate reflection of water use during that period. This raises questions as to the accuracy of those reading the meter from your office or alternatively administrative errors and whether in fact other errors are occurring on a regular basis from your end that are separate from any leaks that may be occurring at the Property.

Ultimately in this instance it appears to me, difficult if not impossible to find two yearly periods in recent times that would allow you to stringently apply the primary formula referred to in AS01 of PSP3 as referred to above to obtain an accurate calculation of ETs for the Property.

Conclusion

Having reviewed years worth of correspondence both to and from your office, I have not seen any person give any serious consideration to the ET issues facing Mr & Mrs Gilmour where clearly they are a special case warranting an individual analysis in accordance with PSP3.¹² Having now taken the opportunity to look at this issue from various angles and directly comparing and contrasting with PSP3 there should be little doubt that objectively viewed, Mr & Mrs Gilmour have been overcharged for sewerage services from TasWater since in or around the year 2012/13 to date. The question that now must be answered by your office, is how can these long running issues with respect to ETs be resolved?

Taking the above discussed three ways in which ETs could be assessed in this case, two of which make the most sense. That is by using the alternative method of calculating ETs under AS01 of PSP3 or by taking the average daily Use in kL as per Mr Brendon Lehner's findings and applying that number into the standard formula, which yield ETs of 8.3 and 4.65 respectively.

Whilst I welcome your thoughts on what TasWater deems to be an appropriate way to calculate ETs for the Property, in light of everything referred to in this correspondence, given the stress of having to continually correspond with your office regarding these issues not receive a considered response has meant that Mr & Mrs Gilmour would rather put to you a generous figure to resolve this issue once and for all to make a resolution as simple as possible. I am therefore instructed to offer the following:

1. Mr & Mrs Gilmour are prepared to pay an ET for the Property of 8.0. If this is accepted, then your office is to:
 - (a) Commencing from the beginning from 2012/13 and continuing to date, recalculate each quarterly sewerage charge based on an ET of 8.0 and advise of the amount of each associated quarterly charge.
 - (b) Deduct the calculated amount derived from (a) above from the amount Mr & Mrs Gilmour have paid your office during that same period and provide Mr & Mrs Gilmour a refund cheque for the difference in value.
 - (c) In accordance with PSP3, your office is to periodically assess ET charges for the Property on an individual basis into the future.

The above offer is open for acceptance for a period of 21 days from the date of this correspondence. If your office chooses not to accept this offer, I would appreciate a detailed response with any proposal for resolution you wish to make.

Finally, unlike some of your customers that simply do not want to pay your accounts for spurious reasons or otherwise seek to delay making payment, I trust you appreciate that Mr & Mrs Gilmour are not such persons and have no issue paying what is reasonable for the services rendered in accordance with both industry standards and PSP3. Had leaks in underground piping not occurred, the normal formula for calculating ETs would have caused no issue. However, in the context of what has occurred in this case, the circumstances warrant an individual assessment of how ETs are calculated to ensure a degree of fairness is achieved which is in accord with PSP3.

¹² Ibid at p128

I look forward to hearing from you.

Kind Regards,

A handwritten signature in black ink, appearing to be 'Ryan Gilmour', with a long horizontal stroke extending to the right.

Ryan Gilmour
Ph: 0417 582 622

CC: Hayley Jaggard
Customer Liason Officer
TasWater
By email only: Hayley.Jaggard@taswater.com.au

Taswater

Tasmanian Water & Sewerage Corporation Pty Ltd
ABN 47 162 220 653



R W Walker
145 Old Bass Highway
WYNYARD TAS 7325



054
1000528
R1_1169

Statement no. 7411728093

Issued 16/04/2019

Charge details

SERVICE ADDRESS 145 Old Bass Highway WYNYARD TAS
INSTALLATION NUMBER 440032663

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 20mm x 10 (01/04/19-30/06/19)	\$857.40
Full Fixed Water Charge - 25mm (01/04/19-30/06/19)	\$133.75
Full Fixed Water Charge - 40mm (01/04/19-30/06/19)	\$342.96
Full Fixed Sewerage Charge x 9.9 ETs* (01/04/19-30/06/19)	\$1,628.95
Trade Waste Category 2A (01/04/19-30/06/19)	\$233.38
	\$3,196.44

VARIABLE USAGE CHARGES

Variable Water Charge (259 kL @ \$1.062/kL) (16/01/19-09/04/19)	\$275.06
Variable Water Charge (25 kL @ \$1.062/kL) (16/01/19-08/04/19)	\$26.55
Variable Water Charge (107 kL @ \$1.062/kL) (16/01/19-08/04/19)	\$113.63
Variable Water Charge (5 kL @ \$1.062/kL) (16/01/19-08/04/19)	\$5.31
Variable Water Charge (3 kL @ \$1.062/kL)	\$3.19

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact

Taswater

POSThillman®



ALL ENQUIRIES & EMERGENCIES 13 6992 agc
EMAIL enquiries@taswater.com.au
WEBSITE www.taswater.com.au
POSTAL GPO BOX 1393 HOBART TAS 7001

Tax Invoice [†] Indicates taxable supply

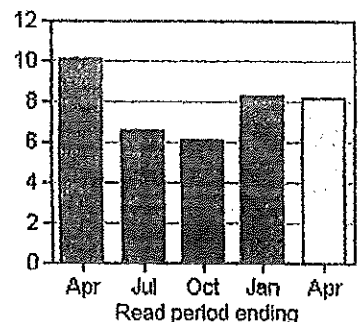
ACCOUNT NUMBER	240032663
CHARGE	\$0.00
TOTAL DUE	\$3,895.00
DATE DUE	27/05/20

Account summary

Last Account	\$3,987
Paid / Adjusted	-\$3,971
Balance	\$
New Charges	\$3,895
Total Due	\$3,895
GST	\$

Your usage

Average daily usage in kilolitres



Current av. daily use: 8.16 kL/d

Current av. daily cost: \$8.56/d

Payment slip

ACCOUNT NUMBER	240032663
CHARGE	\$0.00
TOTAL DUE	\$3,895.00
DATE DUE	27/05/20

Taswater

Tasmanian Water & Sewerage Corporation Pty Ltd
 ABN 47 162 220 653



R W Walker
 145 Old Bass Highway
 WYNYARD TAS 7325



054
 1001304
 R1_2727

13 6992

enquiries@taswater.com.au

www.taswater.com.au

GPO BOX 1393 HOBART TAS 7001

Tax Invoice Indicates taxable supply

Invoice number	24003266
Invoice date	22/11/2018
Invoice value	\$3,803.93
GST	\$0.00

Statement no. 7411627819

Issued 18/10/2018

Charge details

SERVICE ADDRESS 145 Old Bass Highway WYNYARD TAS
INSTALLATION NUMBER 440032663

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 20mm x 10 (01/10/18-31/12/18)	85.74	\$857.40
Full Fixed Water Charge - 25mm (01/10/18-31/12/18)		\$133.75
Full Fixed Water Charge - 40mm (01/10/18-31/12/18)		\$342.96
Full Fixed Sewerage Charge x 9.9 ETs* (01/10/18-31/12/18)	164.54	\$1,628.95
Trade Waste Category 2A (01/10/18-31/12/18)	233.38	\$233.38
Total		\$3,196.44

VARIABLE USAGE CHARGES

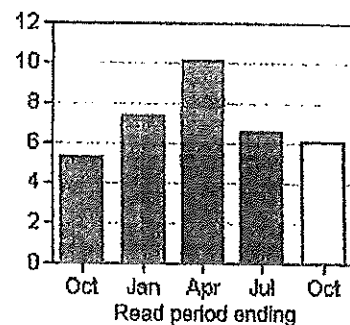
Variable Water Charge (240 kL @ \$1.062/kL) (12/07/18-15/10/18)	\$254.88
Variable Water Charge (50 kL @ \$1.062/kL) (12/07/18-17/10/18)	\$53.10
Variable Water Charge (1 kL @ \$1.062/kL) (12/07/18-07/08/18)	\$1.06
Variable Water Charge (1 kL @ \$1.062/kL) (12/07/18-07/08/18)	\$1.06
Variable Water Charge (5 kL @ \$1.062/kL)	\$5.31

Account summary

Last Account	\$3,752.2
Paid / Adjusted	-\$3,752.2
Balance	\$0.0
New Charges	\$3,803.9
Total Due	\$3,803.9
GST	\$0.0

Your usage

Average daily usage in kilolitres



Current av. daily use: 6.12 kL/day

Current av. daily cost: \$6.44/day

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact

Payment slip

Invoice number	24003266
Invoice date	22/11/2018
Invoice value	\$3,803.93
GST	\$0.00

Taswater

Balance: \$3131.21
 BPA used 14/11/18



Taswater

Tasmanian Water & Sewerage Corporation Pty Ltd
ABN 47 162 220 653



Hillmac Nominees Pty Ltd
1 Goldie Street
WYNYARD TAS 7325



054

R0_1453

Statement no. 7411671995

Issued 11/01/2019

Charge details

SERVICE ADDRESS

1 Goldie Street WYNYARD TAS

INSTALLATION NUMBER

440035160

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 32mm (01/01/19-31/03/19)	\$219.49
Full Fixed Sewerage Charge x 2 ETs* (01/01/19-31/03/19)	\$329.08
Full Fixed Sewerage Charge x 11.2 ETs* (01/01/19-31/03/19)	\$1,675.27
Trade Waste Category 2A (01/01/19-31/03/19)	\$233.38
	\$2,457.22

VARIABLE USAGE CHARGES

Variable Water Charge (523 kL @ \$1.062/kL) (09/10/18-09/01/19)	\$555.43
--	----------

TOTAL NEW CHARGES

\$3,012.65

31
28
31
90
Fixed 27.30PD in advance?
water k-6
per day

Tax Invoice *Indicates taxable supply

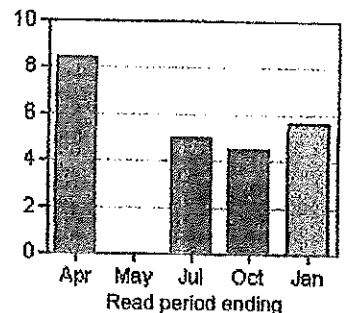
Account no.	240035160
Overdue	\$0.00
Total due	\$3,012.65
Due date	18/02/2019

Account summary

Last Account	\$2,885.21
Paid / Adjusted	-\$2,885.21
Balance	\$0.00
New Charges	\$3,012.65
Total Due	\$3,012.65
GST	\$0.00

Your usage

Average daily usage in kilolitres



Current av. daily use: 5.68 kL/day

Current av. daily cost: \$5.97/day

If paying in person please keep account intact

Payment slip

Account no.	240035160
Overdue	\$0.00
Total due	\$3,012.65
Due date	18/02/2019

Taswater

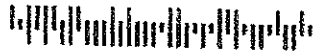
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Taswater

Tasmanian Water & Sewerage Corporation Pty Ltd
ASN 47 162 220 653



Hillmac Nominees Pty Ltd
1 Goldie Street
WYNYARD TAS 7325



054

R0_1328

Statement no. 7411621684

Issued 11/10/2018

Charge details

SERVICE ADDRESS **INSTALLATION NUMBER**
1 Goldie Street WYNYARD TAS 440035160

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 32mm (01/10/18-31/12/18)	\$219.49
Full Fixed Sewerage Charge x 2 ETs* (01/10/18-31/12/18)	\$329.08
Full Fixed Sewerage Charge x 11.2 ETs* (01/10/18-31/12/18)	\$1,675.27
Trade Waste Category 2A (01/10/18-31/12/18)	\$233.38
	\$2,457.22

VARIABLE USAGE CHARGES

Variable Water Charge (403 kL @ \$1.062/kL) (10/07/18-08/10/18)	\$427.99
--	----------

TOTAL NEW CHARGES **\$2,885.21**

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact

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WEBSITE www.taswater.com.au

POSTAL GPO BOX 1393 HOBART TAS 7001

Tax Invoice Indicates taxable supply

Account no. **240035160**

Overdue **\$0.00**

Total due **\$2,885.21**

Due date **15/11/2018**

Account summary

Last Account \$2,914.7

Paid / Adjusted -\$2,914.7

Balance \$0.0

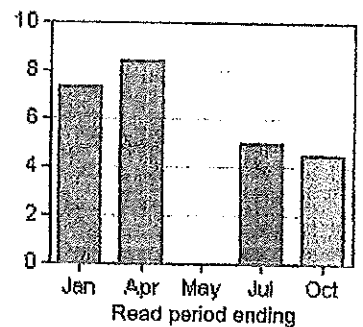
New Charges \$2,885.2

Total Due **\$2,885.2**

GST \$0.0

Your usage

Average daily usage in kilolitres



Current av. daily use: 4.48 kL/day

Current av. daily cost: \$4.70/day

Payment slip

Account no. **240035160**

Overdue **\$0.00**

Total due **\$2,885.21**

Due date **15/11/2018**

Taswater

Tasmanian Water & Sewerage Corporation Pty Ltd
ABN 47 167 220 653



Hillmac Nominees Pty Ltd
1 Goldie Street
WYNYARD TAS 7325

054

R3_2719

"E"

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WEBSITE www.taswater.com.au

POSTAL GPO BOX 1393 HOBART TAS 7001

Tax Invoice Indicates taxable supply

Account no.	240035160
Overdue	\$0.00
Total due	\$2,914.11
Due date	16/08/2018

2835988
MMS0000

Statement no. 7411572054

Issued 12/07/2018

Charge details

SERVICE ADDRESS	INSTALLATION NUMBER	440035160
1 Goldie Street WYNYARD TAS		

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 32mm (01/07/18-30/09/18)	\$219.49
Full Fixed Sewerage Charge x 2 ETs* (01/07/18-30/09/18)	\$329.08
Full Fixed Sewerage Charge x 11.2 ETs* (01/07/18-30/09/18)	\$1,675.27
Trade Waste Category 2A (01/07/18-30/09/18)	\$233.38
	\$2,457.22

VARIABLE USAGE CHARGES

Variable Water Charge (401 kL @ \$1.0202/kL) (11/04/18-30/06/18)	\$409.10
Variable Water Charge (45 kL @ \$1.062/kL) (01/07/18-09/07/18)	\$47.79
	\$456.89

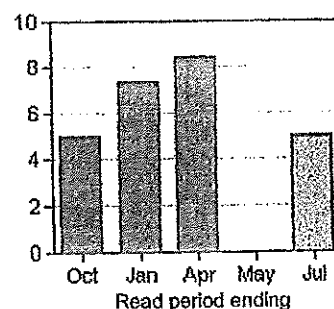
TOTAL NEW CHARGES	\$2,914.11
--------------------------	-------------------

Account summary

Last Account	\$3,051.07
Paid / Adjusted	-\$3,051.07
Balance	\$0.00
New Charges	\$2,914.11
Total Due	\$2,914.11
GST	\$0.00

Your usage

Average daily usage in kilolitres



Current av. daily use: 5.01 kL/day

Current av. daily cost: \$5.08/day

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact

Payment slip

Account no.	240035160
Overdue	\$0.00
Total due	\$2,914.11
Due date	16/08/2018

See over page for payment options

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Tasmanian Water & Sewerage Corporation Pty Ltd
ABN 47 162 220 653



Hillmac Nominees Pty Ltd
1 Goldie Street
WYNYARD TAS 7325

054

R3_635

Statement no. 7411524508

Issued 17/04/2018

Charge details

SERVICE ADDRESS **INSTALLATION NUMBER**
1 Goldie Street WYNYARD TAS 440035160

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 30mm (01/04/18-30/06/18)	\$185.33
Full Fixed Sewerage Charge x 2 ETs* (01/04/18-30/06/18)	\$316.12
Full Fixed Sewerage Charge x 11.2 ETs* (01/04/18-30/06/18)	\$1,559.26
Trade Waste Category 2A (01/04/18-30/06/18)	\$224.19
	\$2,284.90

VARIABLE USAGE CHARGES

Variable Water Charge (751 kL @ \$1.0202/kL) (11/01/18-10/04/18)	\$766.17
---	----------

TOTAL NEW CHARGES **\$3,051.07**

Tax Invoice *Indicates taxable supply

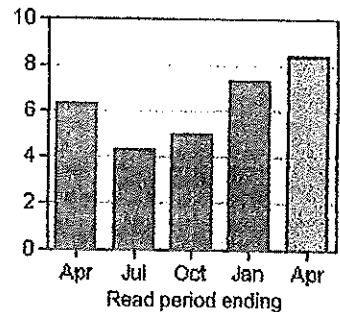
Account no.	240035160
Overdue	\$0.00
Total due	\$3,051.07
Due date	23/05/2018

Account summary

Last Account	\$2,918.44
Paid / Adjusted	-\$2,918.44
Balance	\$0.00
New Charges	\$3,051.07
Total Due	\$3,051.07
GST	\$0.00

Your usage

Average daily usage in kilolitres



Current av. daily use: 8.44 kL/day

Current av. daily cost: \$8.51/day

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact

Payment slip

Account no.	240035160
Overdue	\$0.00
Total due	\$3,051.07
Due date	23/05/2018

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See over page for payment options

Taswater

Tasmanian Water & Sewerage Corporation Pty Ltd
ABN 47 162 220 653



C C & G A Gilmour
Beach Retreat Tourist Park
30b Old Bass Highway
WYNYARD TAS 7325



054
1001299
R1_2727

Statement no. 7411677770

Issued 18/01/2019

Charge details

SERVICE ADDRESS **INSTALLATION NUMBER**
30B Old Bass Highway WYNYARD TAS 440028098

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 100mm (01/01/19-31/03/19)	\$2,143.50
Full Fixed Sewerage Charge x 15.4 ETs* (01/01/19-31/03/19)	\$2,533.92
	\$4,677.42

VARIABLE USAGE CHARGES

Variable Water Charge (-17 kL @ \$1.062/kL) (18/10/18-18/10/18)	-\$18.05
Variable Water Charge (272 kL @ \$1.062/kL) (20/10/18-15/01/19)	\$288.86
	\$270.81

TOTAL NEW CHARGES **\$4,948.23**

Tax Invoice Indicates taxable supply

240028098

\$34,691.27

\$40,123.77

25/02/2019

Overdue amount payable immediately

Account summary

Last Account **\$34,691.27**

Paid / Adjusted **\$484.27**

Balance **\$35,175.54**

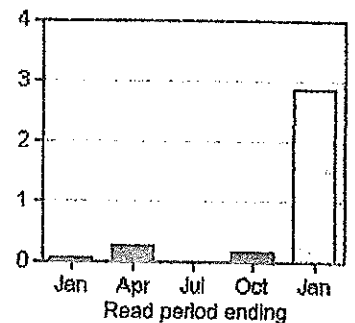
New Charges **\$4,948.23**

Total Due **\$40,123.77**

GST **\$0.00**

Your usage

Average daily usage in kilolitres



Current av. daily use: 2.87 kL/day

Current av. daily cost: \$3.01/day

If paying in person please keep account intact

Payment slip

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240028098

\$34,691.27

\$40,123.77

25/02/2019

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Tasmanian Water & Sewerage Corporation Pty Ltd
ABN 47 162 220 653



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Beach Retreat Tourist Park
30b Old Bass Highway
WYNYARD TAS 7325



D54
1000060
R1_133

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www.taswater.com.au
GPO BOX 1393 HOBART TAS 7001

Tax Invoice Indicates taxable supply

240028098

\$28,470.08

\$34,691.27

3/12/2018

Statement no. 7411634084

Issued 29/10/2018

Change details

SERVICE ADDRESS **INSTALLATION NUMBER**
30B Old Bass Highway WYNYARD TAS 440028098

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 100mm (01/10/18-31/12/18) \$2,143.50
Full Fixed Sewerage Charge x 15.4 ETs* (01/10/18-31/12/18) \$2,533.92
\$4,677.42

VARIABLE USAGE CHARGES

Variable Water Charge (17 kL @ \$1.062/kL)
(12/07/18-17/10/18) \$18.05

TOTAL NEW CHARGES \$4,695.47

Overdue amount payable immediately

Account summary

Last Account \$29,995.81

Paid / Adjusted \$0.01

Balance \$29,995.81

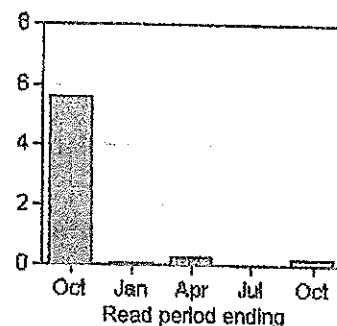
New Charges \$4,695.47

Total Due \$34,691.27

GST \$0.01

Your usage

Average daily usage in kilolitres



Current av. daily use: 0.18 kL/day

Current av. daily cost: \$0.18/day

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact.

Payment slip

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240028098

\$28,470.08

\$34,691.27

3/12/2018

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Tasmanian Water & Sewerage Corporation Pty Ltd
ABN 47 162 220 653

C C & G A Gilmour
Beach Retreat Tourist Park
30b Old Bass Highway
WYNYARD TAS 7325



054

Statement no. 7411606108

Issued 04/09/2018

Charge details

SERVICE ADDRESS	INSTALLATION NUMBER
30B Old Bass Highway WYNYARD TAS	440028098

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 100mm (01/07/18-30/09/18)	\$1,955.45
Full Fixed Sewerage Charge x 15.4 ETs* (01/07/18-30/09/18)	\$1,902.25
Total	\$3,857.70

VARIABLE USAGE CHARGES

Variable Water Charge (1 kL @ \$1.0202/kL) (18/04/18-30/06/18)	\$1.02
---	--------

CREDIT NOTES

Variable Water Charge (-1 kL @ \$1.0202/kL) (18/04/18-30/06/18)	-\$1.02
Full Fixed Water Charge - 100mm (01/07/18-30/09/18)	-\$1,955.45
Full Fixed Sewerage Charge x 24.8 ETs* (01/07/18-30/09/18)	-\$3,063.36
Total	-\$5,019.83

TOTAL NEW CHARGES	-\$1,161.11
--------------------------	--------------------

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact

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POSTAL GPO BOX 1393 HOBART TAS 7001

Tax Invoice Indicates taxable supply

Accounting	240028098
Overdue	\$27,294.52
Total Due	\$31,153.24
Due Date	9/10/2018

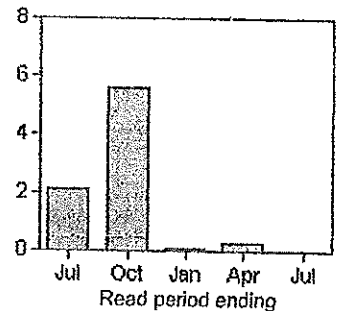
Overdue amount payable immediately

Account summary

Last Account	\$32,314.35
Paid / Adjusted	\$0.00
Balance	\$32,314.35
New Charges	-\$1,161.11
Total Due	\$31,153.24
GST	\$0.00

Your usage

Average daily usage in kilolitres



Current av. daily use: 0.01 kL/day

Current av. daily cost: \$0.00/day

Payment slip

Accounting	240028098
Overdue	\$27,294.52
Total Due	\$31,153.24
Due Date	9/10/2018

Taswater

Tasmanian Water & Sewerage Corporation Pty Ltd
ABN 11 47 162 220 653



C C & G A Gilmour
Beach Retreat Tourist Park
30b Old Bass Highway
WYNYARD TAS 7325



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1001136
R1_2455

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GPO BOX 1393 HOBART TAS 7001

Tax Invoice - Indicates taxable supply

240028098

\$22,962.65

\$27,294.52

25/05/2018

Statement no. 7411526554

Issued 19/04/2018

Charge details

SERVICE ADDRESS **INSTALLATION NUMBER**
30B Old Bass Highway WYNYARD TAS 440028098

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 100mm (01/04/18-30/06/18) \$1,823.92
Full Fixed Sewerage Charge x 24.8 ETs* (01/04/18-30/06/18) \$2,483.47
\$4,307.39

VARIABLE USAGE CHARGES

Variable Water Charge (24 kL @ \$1.0202/kL)
(16/01/18-17/04/18) \$24.48

TOTAL NEW CHARGES \$4,331.87

Overdue amount payable immediately

Account summary

Last Account \$22,962.65

Paid / Adjusted \$0.00

Balance \$22,962.65

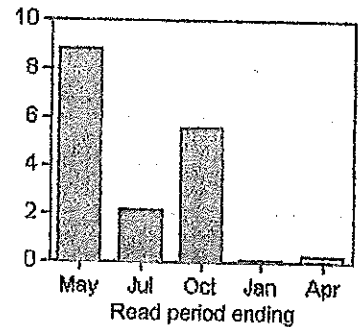
New Charges \$4,331.87

Total Due \$27,294.52

GST \$0.00

Your usage

Average daily usage in kilolitres



Current av. daily use: 0.26 kL/day

Current av. daily cost: \$0.27/day

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact

Payment slip

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240028098

\$22,962.65

\$27,294.52

25/05/2018

Taswater

Tasmanian Water & Sewerage Corporation Pty Ltd
ABN 77 162 220 653



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Beach Retreat Tourist Park
30b Old Bass Highway
WYNYARD TAS 7325



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1001119
R1_2995

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GPO BOX 1393 HOBART TAS 7001

Tax Invoice Indicates taxable supply

240028098

\$18,650.16

\$22,962.65

26/02/2018

Statement no. 7411477955

Issued 20/01/2018

Charge details

SERVICE ADDRESS **INSTALLATION NUMBER** 440028098
30B Old Bass Highway WYNYARD TAS

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 100mm (01/01/18-31/03/18) \$1,823.92
Full Fixed Sewerage Charge x 24.8 ETs* (01/01/18-31/03/18) \$2,483.47
\$4,307.39

VARIABLE USAGE CHARGES

Variable Water Charge (5 kL @ \$1.0202/kL)
(18/10/17-15/01/18) \$5.10

TOTAL NEW CHARGES \$4,312.49

Overdue amount payable immediately

Account summary

Last Account \$18,650.16

Paid / Adjusted \$0.00

Balance \$18,650.16

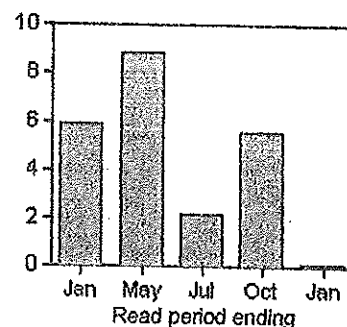
New Charges \$4,312.49

Total Due \$22,962.65

GST \$0.00

Your usage

Average daily usage in kilolitres



Current av. daily use: 0.06 kL/day

Current av. daily cost: \$0.06/day

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact

Payment slip

240028098

\$18,650.16

\$22,962.65

26/02/2018

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Taswater

Tasmanian Water & Sewerage Corporation Pty Ltd
ABN 47 162 220 653



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30b Old Bass Hwy
WYNYARD TAS 7325



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1000168
R1_377

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GPO BOX 1393 HOBART TAS 7001

Tax Invoice Indicates taxable supply

240028091

\$13,837.71

\$18,650.11

27/11/2017

Statement no. 7411429687

Issued 21/10/2017

Charge details

SERVICE ADDRESS **INSTALLATION NUMBER** 440028098
30B Old Bass Highway WYNYARD TAS

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 100mm (01/10/17-31/12/17) \$1,823.92
Full Fixed Sewerage Charge x 24.8 ETs* (01/10/17-31/12/17) \$2,483.47
\$4,307.39

VARIABLE USAGE CHARGES

Variable Water Charge (476 kL @ \$1.0202/kL) \$485.62
(21/07/17-04/10/17)
Variable Water Charge (14 kL @ \$1.0202/kL) \$14.28
(21/07/17-04/10/17)
Variable Water Charge (5 kL @ \$1.0202/kL) \$5.10
(05/10/17-17/10/17)
\$505.00

TOTAL NEW CHARGES \$4,812.39

Overdue amount payable immediately

Account summary

Last Account \$13,837.71

Paid / Adjusted \$0.00

Balance \$13,837.71

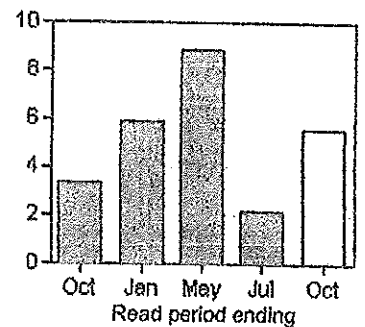
New Charges \$4,812.39

Total Due \$18,650.11

GST \$0.00

Your usage

Average daily usage in kilolitres



Current av. daily use: 5.62 kL/day

Current av. daily cost: \$5.67/day

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact

Payment slip

24002809

\$13,837.71

\$18,650.11

27/11/2017

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Tasmanian Water & Sewerage Corporation Pty Ltd
A 3N 47 162 220 653



C C & G A Gilmour
Beach Retreat Tourist Park
30b Old Bass Hwy
WYNYARD TAS 7325



054
1000259
R1_547

enquiries@taswater.com.au

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GPO BOX 1393 HOBART TAS 7001

13 6992

Tax Invoice Indicates taxable supply

240028098

\$9,354.56

\$13,837.77

31/08/2017

Statement no. 7411380213

Issued 27/07/2017

Charge details

SERVICE ADDRESS **INSTALLATION NUMBER**
30B Old Bass Highway WYNYARD TAS 440028098

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 100mm (01/07/17-30/09/17) \$1,823.92
Full Fixed Sewerage Charge x 24.8 ETs* (01/07/17-30/09/17) \$2,483.47
\$4,307.39

VARIABLE USAGE CHARGES

Variable Water Charge (119 kL @ \$0.9954/kL) (05/05/17-30/06/17) \$118.45
Variable Water Charge (42 kL @ \$1.0202/kL) (01/07/17-20/07/17) \$42.85
Variable Water Charge (1 kL @ \$0.9954/kL) (05/05/17-30/06/17) \$1.00
Variable Water Charge (1 kL @ \$1.0202/kL) (01/07/17-20/07/17) \$1.02
\$163.32

TOTAL NEW CHARGES

\$4,470.71

Overdue amount payable immediately

Account summary

Last Account \$14,354.5

Paid / Adjusted -\$4,987.5

Balance \$9,367.0

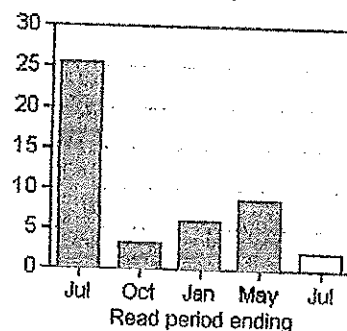
New Charges \$4,470.7

Total Due \$13,837.7

GST \$0.0

Your usage

Average daily usage in kilolitres



Current av. daily use: 2.14 kL/day

Current av. daily cost: \$2.12/day

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact

Payment slip

240028098

\$9,354.56

\$13,837.77

31/08/2017

Taswater

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LEAK REBATE
"0"

Taswater

TW HPRM ref: PD17/2407

24 April 2017

CC & GA Gilmour
30b Old Bass Highway
WYNYARD TAS 7325

Dear CC & GA Gilmour

Undetected Leak Remission – 30b Old Bass Highway, Wynyard TAS 7325

In response to your application received on 14 December 2016 for an undetected water leak remission at the above property, we are pleased to advise that the amount of \$4,454.34 will be credited to your account.

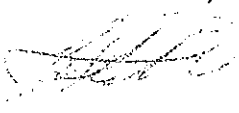
The remission has been calculated based upon your specific circumstances at 50 percent above your daily average use. Calculations are included in the following table.

Number of days in leak period	645 Days
Daily average use with leak	16.87 kL
Daily average use normal	2.55 kL
Difference in daily average use	14.32 kL
Rate per kilolitre	\$0.9474 for period 11 November 2014 to 30 June 2015 \$0.9711 for period 1 July 2015 to 30 June 2016 \$0.9954 for period 1 July 2016 to 16 August 2016
Excess water use from leak	\$8,908.69
Remission amount @ 50%	\$4,454.34

Please note in accordance with our Customer Charter, a remission for an undetectable water leak is only applicable once for a particular property, which has been applied. We suggest you continue to monitor your water use and regularly read your meter to identify any future leaks that may impact your water bill.

Should you have any questions or require further information in relation to this matter, please contact our Customer Service Centre on 13 6992 or via email at enquires@taswater.com.au.

Yours sincerely


Brendon Lehner
Customer Liaison Officer

Water leaks at 30b old bass hwy Wynyard

"P"

Water leaks at 30b old bass hwy Wynyard

To Taswater

I have been asked by Mr. & Mrs. Gilmour to provide confirmation of the work we've done, at 30b Old Bass Hwy Wynyard regarding water leaks in their water main at the CaravanPark.

Iv been doing their work for approximately 10 years. In that time they have had a number of leaks in the water main.

This year

The first leak was 24 January.it was a 32 mm polly pipe.

The second leak was on the 18 February that one was on a 25mm polly pipe.

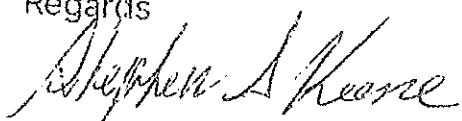
The third on the 4 March was also a 25mm polly pipe.

The water mains are around 1 m deep in beach sand hence them not being noticeable for quite some time. In the dryer months you are alerted to the problems by the grass greening up in a particular area , because of the depth of the pipes and the beach sand this take quite a while to appear. In the wetter months I'd say the leaks takes a lot longer to show up and the ground becomes water logged. These leaks usually are a lot bigger leaks because they have been leaking for a longer period, and leaks get worse the more time that elapses before their found.

The polly pipes (mains) is very old. (VERY OLD) their all different classes of pipe to what you would use today. Some of it is quite thin in the wall other sections aren't. Iv looked at reducing the water pressure but the water pressure isn't very high. (that's Wynyard).

Given the problems they have had and the old pipes these leaks will continue to occur

Regards



Stephen Keene

Stephen Keene Plumbing & Contracting.

Sent from my iPad



TW HPE ref: 19/54820

17 May 2019

Mr Ryan Gilmour
C/- Beach Retreat Tourist Park
30B Old Bass Highway
Wynyard TAS 7325

Sent via email: ryan_gilmour@hotmail.com

Dear Mr Gilmour

30B Old Bass Highway, Wynyard: Disputed fixed water charges

We refer to your letter of 5 April 2019, which sets out Mr and Mrs Gilmour's complaints regarding the fixed water charges at 30B Old Bass Highway, Wynyard (the **Property**). As at 17 May 2019, the amount outstanding for these fixed water charges is \$19,753.40.

In response to your letter and in the interests of avoiding ongoing cost to Mr and Mrs Gilmour, the legal services department at TasWater has undertaken a review of the matter.

The findings of this review accord with TasWater's previous position on the matter which has been communicated to Mr and Mrs Gilmour on multiple occasions, including by letters dated 25 March 2019 and 14 December 2018. That is, due to the configuration of infrastructure at the **Property** and the size of the connection to TasWater infrastructure, the fixed charges for the 100mm connection to the **Property** have been correctly levied and are therefore due and payable.

A detailed explanation of TasWater's position is set out below. The headings used are intended to respond to the key concerns raised in your letter of 5 April, which we understand to be:

- The infrastructure currently in place on the **Property**
- The functionality of the water connection to the **Property**
- The need for a 100mm water connection
- Tasmanian Fire Service requirements for the **Property**
- TasWater's obligations to its customers
- Mr and Mrs Gilmour's obligations (the Customer Contract)
- Outstanding charges for the 100mm water connection
- Charges going forward.

Before addressing each of these concerns, I wish to reiterate that the complaints raised in your letter relating to the installation of, and responsibility for, the 100mm meter are historical in nature and relate to the policies and actions of Waratah-Wynyard Council (the **Council**). As you will appreciate, while TasWater is able to assist with complaints that have arisen since incorporation, in the absence of documented evidence, we are unable to comment on any agreement that may have existed between Council and Mr and Mrs Gilmour in relation to this meter.

Tasmanian Water & Sewerage Corporation Pty Ltd
GPO Box 1393 Hobart Tas 7001
Email: enquiries@taswater.com.au
Tel: 13 65 92

ABN: 67 167 220 653



Regardless of the ownership and responsibility for the 100mm water main, as explained below, as the Property is — and has been at all relevant times — connected to TasWater infrastructure through a 100mm connection, TasWater is entitled to charge on this basis.

The infrastructure currently in place at the Property

Your letter of 5 April set out in some detail the infrastructure that currently supports the supply of water within the Property, including the size and configuration of pipes that convey water around the Property and two 32mm water meters that are located within the property.

For the avoidance of doubt, TasWater is only responsible for supplying water to a property's connection point. This is set out in clause 7(d) of the Customer Contract, which states:

We are not responsible for your infrastructure or infrastructure belonging to any other person located beyond the Connection Point (excluding the Water Meter).

The connection point means the point at which your pipes connect with TasWater's water infrastructure.

All plumbing beyond the connection point is considered 'internal plumbing' and is the responsibility of the property owner rather than TasWater. TasWater is unable to comment on this infrastructure, and its size and configuration does not impact TasWater's billing practices.

Accordingly, as the Property is connected to TasWater infrastructure through a 100mm connection, TasWater is entitled to charge for this connection size. The 32mm water meters and pipes referred to in your letter of 5 April 2019 are considered internal plumbing, and accordingly, TasWater does not have any responsibility for these, nor does it impose fixed or volumetric charges for usage measured through these meters.

Functionality of the water connections

As previously explained to Mr and Mrs Gilmour, fixed charges for a water connection are determined not only by the size of the connection but also upon its functionality. As set out in our Price and Services Plan (<https://www.taswater.com.au/PSP3/Price-and-Service-Plan-2018-2021>), different charges are imposed for connections that service day-to-day water needs of a property versus those that provide water only for firefighting purposes.

If a connection is required solely for firefighting purposes (as assessed by the Tasmanian Fire Service and explained further below), TasWater classifies the connection as a 'dedicated fire service' and will charge only 25 per cent of the fixed charge for the relevant connection size. This is to reflect the fact that the connection will be used infrequently.

To classify as a dedicated fire service, the connection must only be used for firefighting purposes. That is, any water required for the day-to-day operation of the property must not register on the meter. If a connection services both the day-to-day water needs of a property as well as the fire needs of the property, TasWater is entitled to charge the full fixed charge for the relevant connection size.

From August 2012, the 100mm connection servicing the Property was classified by Cradle Mountain Water as a dedicated fire service and charged accordingly. A number of letters were sent to Mr and Mrs Gilmour from Cradle Mountain Water explaining these charges. The letter dated 5 December 2012 explained:

It is important to note that there should be no water usage registered through the 100mm meter given that it is a dedicated fire service. If water usage is registered and has not been



used for firefighting purposes the dedicated fire service rate will be cancelled and full charges will apply.

In June 2015 TasWater undertook an audit of the Property and found that the 100mm meter was in fact registering water usage that was not used for firefighting purposes. Accordingly, a letter dated 12 June 2015 was sent to Mr and Mrs Gilmour explaining that full charges for a 100mm connection would apply.

As previously explained to Mr and Mrs Gilmour, in order for the 100mm connection to be classified as a dedicated fire service (and therefore charged at only 25 per cent of the 100mm fixed charge), the infrastructure for the Property would have to be adjusted so that water used for day-to-day operations does not register on the 100mm water meter.

This could be achieved by installing a 'bypass' connection (of an appropriate size) on the 100mm water meter. This would allow all water for day-to-day use to essentially circumnavigate the 100mm meter, and the 100mm connection could then classify as a dedicated fire service.

The size of the bypass connection would depend upon the day-to-day water needs of the Property. We understand from your letter of 5 April 2019 that a 32mm bypass connection may be sufficient to currently fulfil these needs, although this determination is the responsibility of a building surveyor, rather than TasWater.

Although TasWater has previously offered to install a bypass meter at the Property and bear the cost of this installation, to date Mr and Mrs Gilmour have not chosen to pursue this option.

The need for a 100mm water connection

We understand from your letter that Mr and Mrs Gilmour's primary complaint is that a 100mm connection is neither desired, nor needed, to service the water needs of the Property. The letter alleges that a 32mm water pipe effectively services all needs of the Property, rendering the 100mm connection redundant.

In relation to the 32mm water pipe, we refer you to the above explanation of internal plumbing and TasWater's billing practices as based on the connection size to TasWater infrastructure.

TasWater (and previously Cradle Mountain Water) have suggested to Mr and Mrs Gilmour on multiple occasions that they investigate whether the 100mm connection to TasWater infrastructure can be downsized. This requires engaging a building surveyor to assess the water needs of the property, which includes consideration of two primary matters:

- The connection size required to service the day-to-day functioning of the property and
- The connection size required to satisfy any firefighting needs as determined by the Tasmanian Fire Service (**TasFire**).

Mr Stefan Deverell of Benchmark Building Surveyors was recently engaged at Council's cost to undertake this activity. At your recommendation, TasWater contacted Mr Deverell regarding the outcome of his assessment. Mr Deverell advised that a 100mm connection is needed to satisfy TasFire's requirements for the Property. This is explained in detail below.

TasFire requirements

We understand that the Property has three fire hose reels and two fire hydrant plugs, which were in place at the time Mr and Mrs Gilmour purchased the relevant land. Presumably they investigated the need and responsibility for these fire hose reels and hydrants (or had the opportunity to) as part of their due diligence upon purchase.



Although legislation does not specify the firefighting capabilities for caravan parks in Tasmania, the *Fire Services Act 1979* (Tas) enables TasFire to recommend, and require, certain steps be taken for preventing fire, minimising fire risk, or providing precautions for protecting life and property. We would also direct you to the obligations contained in the *General Fire Regulations 2010* (Tas). Accordingly, it is within TasFire's power to require the hose reels and hydrants on the Property to remain in place and to be serviced by a sufficient water supply.

Your letter of 5 April 2019 included 'Annexure C', an email from Mr Robert Whiteway (TasFire) to Mr Deverell, which stated:

- There is a need to provide fire protection for the property.
- As there is considerable distance to cover, and several properties in and surrounding the caravan park, it would be less than ideal to remove this valuable resource.
- It appears that the hydrants have supported the expansion of buildings to the site through previous approvals.
- Therefore, in this instance, the Chief Officer would not support the removal of hydrants or hose reels.

We read this email as (informally) indicating that TasFire would not support the removal of the fire hydrants and hose reels from the property, and that further, their existence has been beneficial in allowing Mr and Mrs Gilmour to develop the Property to its current capabilities.

Our subsequent communication with Mr Deverell confirmed that, as TasFire would not support removal of the fire hose reels or fire hydrants on the property and the fire main is over 10m in hydraulic length, a 100mm connection is required.

The most appropriate option for Mr and Mrs Gilmour to pursue, should they wish to reduce the service charges associated with this connection, is therefore the installation of a 'bypass' connection as explained above.

TasWater obligations to customers

As stated in your letter of 5 April 2019, TasWater has a number of obligations in relation to its customers, both relating to the amount it may charge customers as well as the way in which it resolves disputes or seeks to recover outstanding charges. Particularly, we refer you to:

- Divisions 5 and 7 of the *Water and Sewerage Industry Act 2008* (Tas), which set out how TasWater's prices are regulated and charged and the customer complaints process, respectively.
- Parts 8 and 9 of the *Water and Sewerage Industry (Customer Service Standards) Regulations 2009* (Tas), which set out the payment of arrears, customer information services and obligations.
- Part 3 of the *Water and Sewerage Industry (Pricing and Related Matters) Regulations 2011* (Tas), which sets out TasWater's pricing principles and details particular charges.
- The Customer Service Code, which includes the complaints, disputes and enquiries process that TasWater must follow (Clause 4) and actions for non-payment (Clause 9).
- The Customer Contract, which explains the parties in the contract (clause 2), TasWater charges (clause 14) and the complaints process (clause 19).



- The Customer Charter, which provides further details on the charges that TasWater imposes (clauses 16 and 17), the complaints process (clause 18), actions that TasWater may pursue for non-payment (clause 23) and the customers' obligations (clause 24).
- The current Price and Services Plan, which sets out the relevant fees charged to the Property.
- TasWater's Complaints, Enquiries and Disputes Management Policy.

From our review of the matter, it appears that TasWater has at all relevant times conducted itself in accordance with these obligations. This has included explaining to Mr and Mrs Gilmour on multiple occasions the charges that apply to the Property due to the configuration of infrastructure, the alternatives available for reducing these charges, and the process that should be followed to implement these alternative(s).

Mr and Mrs Gilmour's obligations: Customer Contract

Your letter of 5 April 2019 states:

The contract derived from the legislation that exists between the Corporation and the customer, in this case Mr & Mrs Gilmour, insofar as the 100mm is concerned either never existed as a result of Mr & Mrs Gilmour deriving no benefit from the 100mm meter, or has been frustrated as a result of the unlawful actions of the Council back in 2004 in placing the 100mm meter onto the Property despite the fact there was no private need or lawful requirement for same.

As you would be aware, the Customer Contract that exists between customers and TasWater is a deemed contract, which has broad application and does not depend on a 'benefit' being obtained by the customer from TasWater's infrastructure. As the Property is connected to TasWater's infrastructure through a 100mm connection, and has been at all relevant times, the customer contract applies in relation to this connection.

In relation to the alleged 'unlawful actions' of Council when installing the 100mm meter in 2004, as advised above, TasWater is unable to comment on this.

Outstanding charges for the 100mm water connection

For the reasons set out above, the fixed charges for the 100mm connection are considered correct, and TasWater is entitled to recover the outstanding charges for this connection, totalling \$19,753.40 as at 17 May 2019.

As previously advised, TasWater is willing to consider entering into a payment plan for the payment of these outstanding charges and direct you to our Collections Team Leader Katie Hooper who can be contacted on 03 6345 3060. Alternatively, you may wish to refer the matter to the Office of the Ombudsman by phoning 1800 001 170 or visiting www.ombudsman.tas.gov.au.

If we do not hear from you within 10 business days from the date of this letter informing us that you have referred the matter to the Ombudsman or are pursuing alternative legal redress, TasWater will consider the matter resolved and is entitled to commence credit activities for the recovery of the outstanding amount.

Charges going forward

Going forward, the account for the Property will continue to be charged the full fixed charge for a 100mm connection.

This charge will continue until Mr and Mrs Gilmour advise that they wish for a 'bypass' connection to be installed on the 100mm connection, as explained above. The appropriate size for this bypass



TW HPE ref: 19/70030

20 May 2019

Mr Ryan Gilmour
C/- Beach Retreat Tourist Park
30B Old Bass Highway
Wynyard TAS 7325

Sent via email:- ryan_gilmour@hotmail.com

Dear Mr Gilmour

Equivalent Tenement (ET) review request – 30B Old Bass Highway

Thank you for your recent correspondence to our Collections Team Leader, Katie Hooper which was forwarded to me for review.

While I appreciate both the depth of the analysis and comparison data provided; and the circumstances impacting the water usage at the property, the Sewerage Service Charges have been calculated in accordance with the Price and Service Plan 2018-21. Those charges have been approved by the Tasmanian Economic Regulator, following significant public consultation.

The charges applied to the account are correct and were adjusted in 2016 following receipt of information from your father to support the water leak remission. It is not appropriate for TasWater to discuss Sewerage Service Charges applied to other proprietor's accounts as a comparison or reason to adjust those applied to the Beach Retreat Tourist Park.

Both TasWater and the Office of the Tasmanian Economic Regulator will undertake public consultation in the development of the next Price and Service Plan and I would encourage you to make a submission through that process if you feel there is an alternative to the current methodology applied to the Tourist Park operated by your parents.

As previously advised, TasWater is willing to consider entering into a payment plan for the payment of these outstanding charges and direct you to our Collections Team Leader Katie Hooper who can be contacted on 03 6345 3060. Alternatively, you may wish to refer the matter to the Office of the Ombudsman by phoning 1800 001 170 or visiting www.ombudsman.tas.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "Geoff Purchase".

Geoff Purchase
Revenue Assurance Manager
Billing Manager

Tasmanian Water & Sewerage Corporation Pty Ltd
GPO Box 1393 Hobart Tas 7001

Sophie Rowlands
Customer Services Manager

7 June, 2019

By email only: Sophie.Rowlands@taswater.com.au

Dear Ms Rowlands,

30b Old Bass Highway, Wynyard – 100mm Meter Dispute/Complaint

I refer to my letter of 5 April, 2019 and your letter in response dated 17 May, 2019.

Whilst I am in the process of referring this matter to the Ombudsman together with a complete set of our correspondence, I deem it appropriate to address some of the inaccurate information or otherwise misguided statements you presented in your abovementioned correspondence and seek clarification on a number of matters you have referred to therein.

Whilst I may not persuade you as to your position, and to this end I appreciate you are an employee of the Corporation, it is nevertheless appropriate I raise these issues now, as it will firstly assist the Ombudsman, later your externally engaged legal Counsel (should Court proceedings be contemplated) and then ultimately a Court itself by way of tendering same in evidence and then finally on the question of costs.

I respond using your headings and have underlined those questions to which I require an answer as they directly relate to statements made in your abovementioned response.

The infrastructure currently in place at the Property

You make the following statements of relevance:

- (a) *"...as the Property is connected to TasWater infrastructure through a 100mm connection, TasWater is entitled to charge for that connection size";*
- (b) *On page 1 of your correspondence and continuing throughout, you repeat that TasWater is "...unable to comment on any agreement that may have existed between Council and Mr & Mrs Gilmour"; and*
- (c) *"...TasWater is unable to comment on this infrastructure, and its size and configuration does not impact TasWater's billing practices".*

A number of issues arise from the above. The first point to make is that decisions made prior to water and sewerage infrastructure passing to *Cradle Mountain Water* and now *TasWater* are your concern and you cannot absolve yourself from responsibility that derives from same. To this I direct your attention to Part 3 of the *Water and Sewerage Corporation Act 2012*. In particular, you ought to familiarise yourself with sections 28 and 30 therein, which provides for the vesting of assets, rights and liability from the Transferor to the Transferee. That is, all the assets, rights and liabilities have transferred from the *Waratah-Wynyard Council* through to *Cradle Mountain Water* and now vest in *TasWater*. Do you still assert that *TasWater* is somehow immune from decisions made by your forerunners, and if so, on what legal basis do you assert same?

You were provided with a copy of the minutes from the *Waratah-Wynyard Council* Meeting held on 17 November, 2003. You can see from those minutes that the decision to place a 100mm meter on the Property was done purely for financial reasons as a way of allowing council savings into the future, by converting the 100mm main to an internal service. I can only hypothesise as to how such savings for Council would be derived, but making such a meter Mr & Mrs Gilmour's problem and the Council absolving themselves from any future public liability and property claims if leaks were to occur are but a few of the more obvious thoughts.

Importantly, the motion was carried by Councillors French and Ransley that the Council was to:

"...request the owners of the property to formally agree that they are prepared to accept ownership and future responsibility for the 100mm water main within the property once the work is completed".

Such agreement was never given by Mr & Mrs Gilmour either expressly or impliedly. In fact, on the contrary, just prior to the abovementioned Council meeting, Mr & Mrs Gilmour were told by the Council that it would reroute the sewerage rising main and water main around the Property in June/July 2004. Mr & Mrs Gilmour confirmed they were happy with this course such that they would withdraw their development application until these works were completed by Council as this would remove all unnecessary encumbrances from their title. Obviously Council made their unilateral decision contrary to this purported agreement in full knowledge of Mr & Mrs Gilmour's position. Annexed hereto and marked "A" is a copy of said correspondence dated 12 November, 2003. If you suggest in the alternative that somehow Council legally placed the 100mm main on the property despite the above, noting that the assets, rights and liabilities have vested in *TasWater*, the onus is on you to provide evidence of same.

As you will have gleaned from the attached correspondence referred to above, the determinations from the Council came about as a result of Mr & Mrs Gilmour submitting a development application, whereby Council realised that they had historically allowed buildings to be erected over a sewer rising main in contravention of s39 of the *Sewers and Drains Act 1954*. As a result of those oversights and with precedent now established for the Property, the Council clearly understood that if there was a substantial break in the sewer rising main of the Property in the future, it could pose a significant risk to life and property for which they would be liable. It was therefore determined for the Council to budget for the relocation of the rising main in the 2004/05 budget.

The Council had the power to make such a determination as the *Local Authority* was (and remains) responsible for all sewage and sewage disposal. To this end I refer to you to sections 4 and 26 of the *Sewers and Drains Act 1954*. The *Sewers and Drains Act 1954* does not however cover water mains and associated infrastructure. The point being, the Council had no lawful right to place a 100mm meter on the Property and for all future responsibility for same to transfer to Mr & Mrs Gilmour unless they provided their express consent to allow same. Or in other words, to permit such action, there required a traditional contract to be entered into between the *Local Authority* (the Council) and Mr & Mrs Gilmour. This is no doubt why the determination of Council was to seek to obtain the formal consent of Mr & Mrs Gilmour, as without same, they had no lawful right to place such infrastructure on the Property.

The above distinction between the two determinations made back on 17 November, 2003 is important as it affects how your *Customer Contract* operates. Pursuant to the *Customer Contract* under the *Price and Service Plan 2018-21* and s60(2) of the *Water and Sewerage Industry Act 2008*, a customer of a regulated entity is taken to have entered into a *Customer Contract* with the regulated

entity (*TasWater*), for the provision of water services and sewerage services, or either of those services as provided for under the *Customer Contract*. Nobody is disputing a contract exists between the Corporation and Mr & Mrs Gilmour. That is, there is clearly a contract between the Corporation and Mr & Mrs Gilmour to deliver water and sewerage services. The dispute relates to whether or not you are lawfully allowed to charge Mr & Mrs Gilmour for a 100mm meter which was unlawfully placed on the Property (whether placed there by *TasWater* or its forebears) and which is not wanted nor required by law. You will not find an answer to this under either the *Customer Contract* or *Price and Service Plan 3* ('PSP3'). The answer will derive from basic contract law principles.

As such, the matter falls into one of two categories. Either:

- (a) The *Customer Contract* has simply never included the 100mm meter as a result of the illegality involved in its placement on the Property at first instance; or
- (b) That the *Customer Contract* insofar as it relates to the 100mm meter is void *ab initio* as a result of there never being an agreement between Mr & Mrs Gilmour and the Council (now *TasWater*). For if this were not the case, then *TasWater* would have carte blanche to install 100mm meters on every residential property in the state, simply to increase the fixed costs payable by those home owners or occupants. Whilst I would not put such thinking past your office, clearly the *Customer Contract* does not protect you from this sort of behaviour.

Irrespective of which of the above scenarios holds true, *TasWater* has no fallback by seeking payment on a quantum meruit basis as:

- (i) You have not provided a service of any value to Mr & Mrs Gilmour as the water that is fed to infrastructure on the Property is from the 32mm (or equivalent) meter (as explained in detail in my aforementioned correspondence); and
- (ii) The dedicated 100mm connection is a piece of public infrastructure that is neither required by law nor requested or accepted by Mr & Mrs Gilmour.

To summarise, reliance on your 'billing practices', vague references to the *Customer Contract* and attempts to absolve yourself from responsibility of actions from *TasWater's* forebears is of no concern. Due to the history of this matter, consideration must be given to contract law principles that govern such disputes and it is clear to me that this has not been done by your office as of yet.

Functionality of the Water Connections

You refer under this heading to the 100mm meter being classified by *Cradle Mountain Water* in 2012 as being a 'dedicated fire service' and refer to letters sent to Mr & Mrs Gilmour, including correspondence dated 5 December, 2012 stating:

"it is important to note that there should be no water usage registered through the 100mm meter given that it is a dedicated fire service. If water is registered and has not been used for fire fighting purposes the dedicated fire service rate will be cancelled and full charges will apply".

I explained in detail why this could not be adhered to in detail on page 4 of my letter of 5 April, 2019 under the heading "Letter from Julie Poole dated 5 December, 2012". I will not repeat myself here other than to remind you that Ms Poole:

- (a) Failed to listen to Mr & Mrs Gilmour as to how water enters the Property through the 100mm meter which is then downsized to 32mm (or equivalent) before servicing the Property's infrastructure;
- (b) Chose not to inform herself of how the water infrastructure was set up on the Property; and/or
- (c) Thought it appropriate to offer a resolution to Mr & Mrs Gilmour that was impossible to adhere to such that if she was aware of how the 100mm meter and 32mm meter were structured (as she ought to have been), engaged in misleading and deceptive conduct through couching her correspondence as some form of permanent solution.

The reality is that everything that is registered on the 32mm meter matches that of the 100mm meter, thus indicating that that no water has been used for the purposes of what Ms Poole describes as the 'dedicated fire service'. Furthermore, the fire hoses that are present on the Property that access the 100mm connection have been non operational for some ten years and have been condemned by TasFire. All this information was made available to Ms Poole prior to her writing the above correspondence. I will address TasFire issues in greater detail later in this correspondence.

Finally, you state:

"Although TasWater have previously offered to install a bypass meter at the Property and bear the cost of this installation (emphasis added), to date Mr & Mrs Gilmour have not chosen to pursue this option".

Whilst I do not need to address the issue of a bypass meter as a result of the legal reasoning outlined above, I would be pleased to see evidence from you as to when this offer was made. Can you please provide me with a copy of this correspondence as I am currently missing this from the file provided by Mr & Mrs Gilmour.

The Need For A 100mm Water Connection & TasFire Requirements

You state that Mr Stefan Deverell of *Benchmark Building Surveyors* was contacted by your office and he confirmed that the 100mm connection is needed to satisfy TasFire's requirements for the Property. You go on to refer me to the *Fire Services Act 1979* and the *General Fire Regulations 2010*. Most interesting to me is the fact you do not state any particular section from those pieces of legislation in which reliance has been placed and how that particular section applies to the Property. I would not provide such throw away lines in providing advice to clients or addressing a court and likewise I would expect at the very least your legal department to have given these pieces of legislation some consideration. As is unfortunately becoming the norm, I will endeavour to assist your understanding.

The *General Fire Regulations 2010* are not applicable to the Property. You and your legal department may wish to consider regulations 4 and 5 therein. Suffice to say, the structures on the Property are neither a "prescribed building" nor a "specified building".

You are aware from Annexure 'C' of my correspondence dated 5 April, 2019 that Mr Robert Whiteway of TasFire has confirmed that there is no requirement for the Property to have a 100mm connection for fire fighting purposes under the *National Construction Code* ("the NCC"). At risk of spelling out the obvious, the NCC provides the minimum necessary requirements for safety and

health; amenity and accessibility, and sustainability in the design, construction, performance and liveability of new buildings (and new building work in existing buildings) throughout Australia. It is a uniform set of technical provisions for building work and plumbing and drainage installations throughout Australia whilst allowing for variations in climate and geological or geographic conditions. The NCC is comprised of the *Building Code of Australia* volumes 1 and 2 along with the *Plumbing Code of Australia* volume 3. The *Building Code of Australia* is what is referred to in regulation 4 of the *General Fire Regulations 2010* insofar as classifying a building as a 'prescribed building'. You therefore have evidence in your possession from *TasFire* themselves that the *General Fire Regulations 2010* do not apply to buildings on the Property. In light of the fact you have raised this piece of legislation as having some relevance to this matter, please advise me of the section(s) that are applicable and how they apply to this matter?

When it comes to the *Fire Service Act 1979*, it is largely an administrative piece of legislation and has no direct relevance to our discussion in this instance. Once again, given you have raised this as a piece of legislation of consequence to this discussion, please advise me of the section(s) that are applicable to this dispute and how they specifically apply in this instance?

You refer in your correspondence to a discussion you purport to have had with Mr Deverall who as you are aware, engaged *TasFire* to assist him in the task of better understanding *TasFire's* Requirements. Mr Robert Whiteway confirmed that there was no legal requirement for the Property to be serviced by a 100mm connection by way of a dedicated fire service and hypothesised as to why it might be there. By way of a summary, he believes it is a valuable piece of infrastructure and therefore would like it to remain. None of these points I take issue with. Of course, on its face, a connection that would enable *TasFire* to fight a fire has value and if it is already there, why remove it? That however is not the point of this dispute. The point is that you are trying to charge for a piece of infrastructure (albeit illegally placed on the Property) for which there is no legal requirement for it exist and for which Mr and Mr Gilmour do not want you to provide a service to. Suffice to say, this goes to the heart of the *Customer Contract*, if indeed it even exists insofar as the 100mm connection is concerned.

To provide a graphic illustration as to why the 100mm connection and associated fire fighting infrastructure is not legally required, I present you the following photographs of the condemned fire fighting equipment that tap into the 100mm connection on the Property.

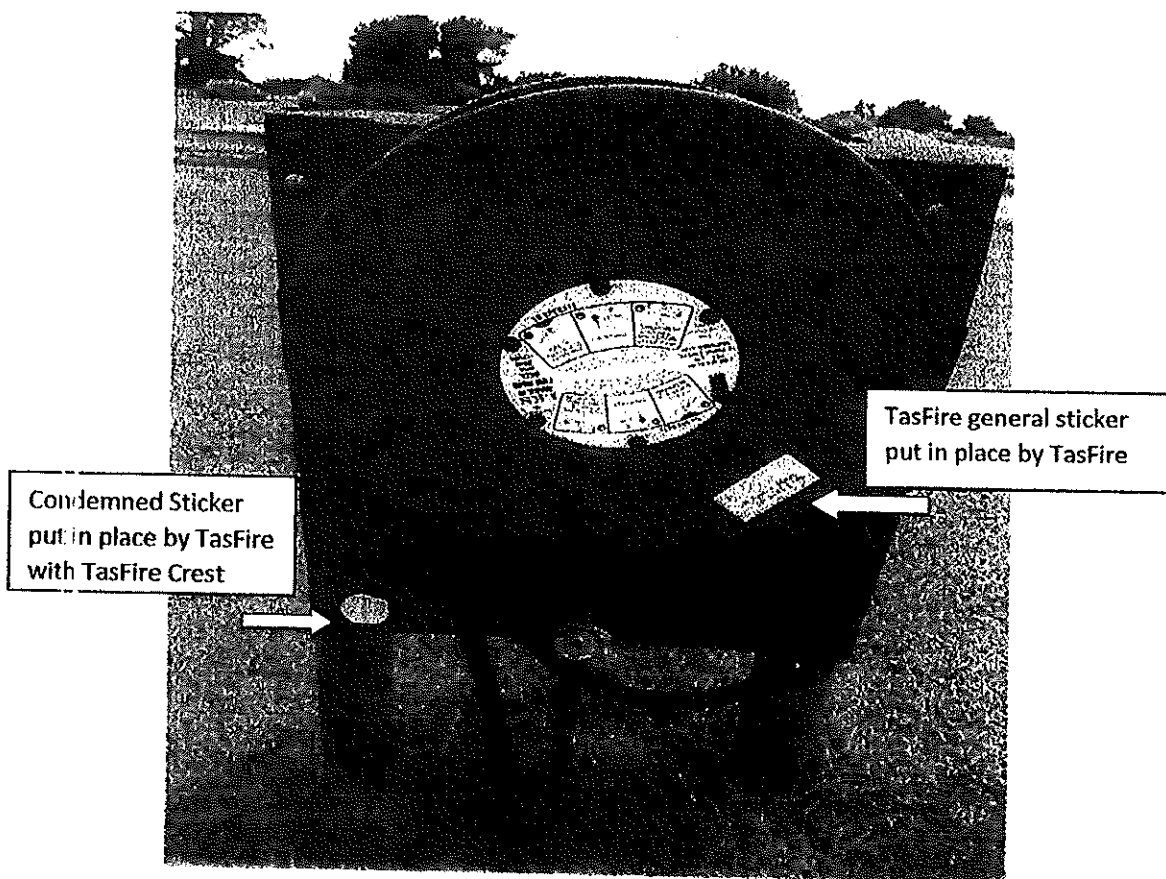


Image 1: Fire hose reel condemned by TasFire with all their own stickers placed on reel

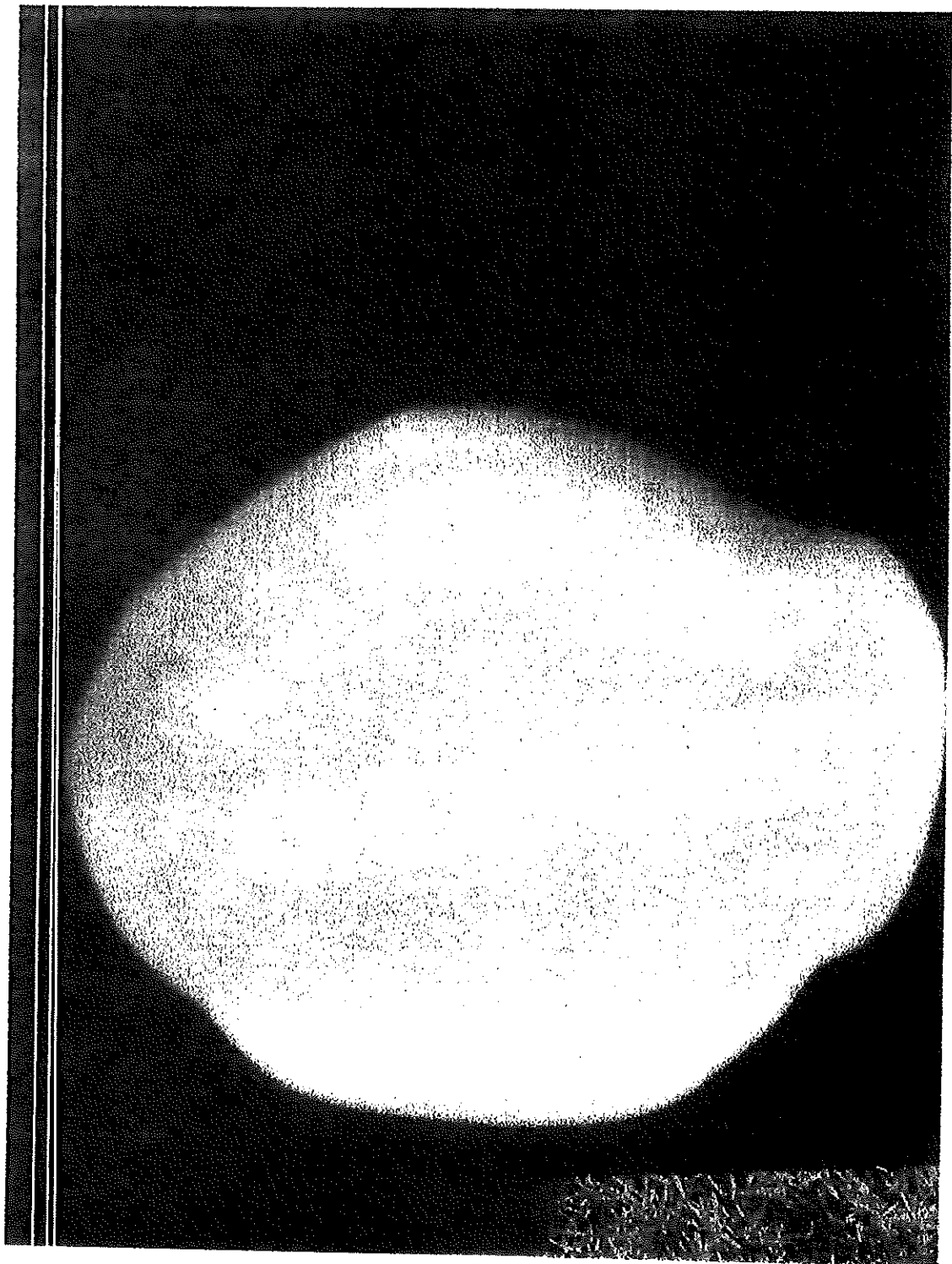


Image 2: Close up of TasFire "condemned" sticker placed on the fire hose reel.

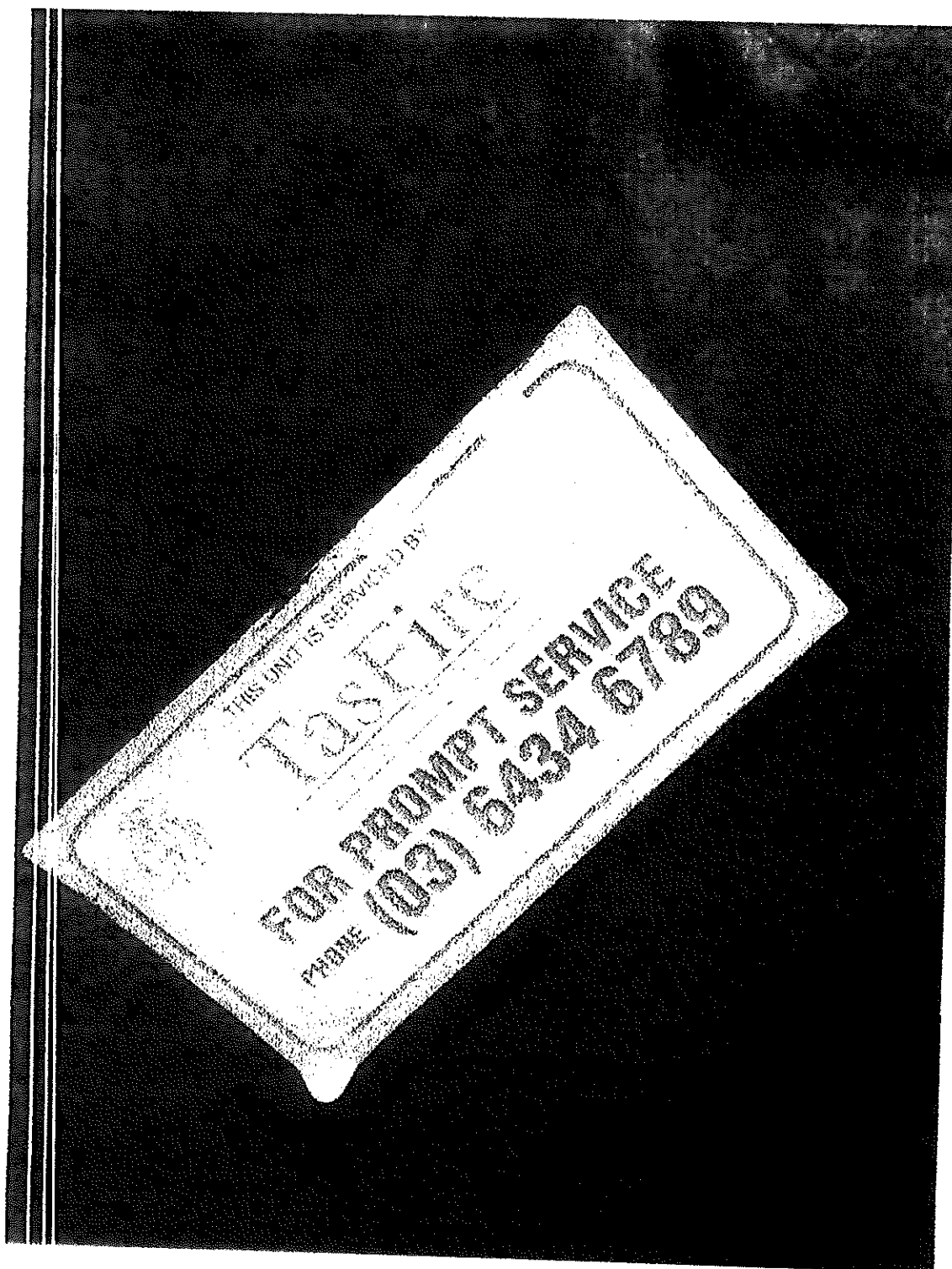


Image 3: close up of TasFire's sticker on the fire hose reel.

The fire hydrants on the Property were non operational and condemned approximately 10 years ago. Employees of your office were shown this infrastructure during previous visits to the Property yet it appears that this may have gone undocumented on your file. The importance of this is that the 100mm pipeline which you suggest ought be a 'dedicated fire service' and cannot be removed, is

in actual fact, not able to be tapped into through the current infrastructure on the Property should a fire occur. If the NCC or any piece of Tasmanian Legislation requires such infrastructure, do you think *TasFire* would condemn such pieces of equipment and then not require it to be replaced or otherwise made operational by Mr and Mrs Gilmour? Furthermore, if you genuinely believe the *General Fire Regulations 2010* have some application to the Property insofar as this 100mm connection is concerned, you may wish to ask yourselves why the various penalty provisions therein have not been acted upon.

In summary, the only requirements for fire fighting equipment are those provided for under the NCC. They include smoke detectors and fire extinguishers in each short term accommodation units. Mr & Mrs Gilmour comply with this requirement.

I trust I have made the legal points insofar as the 100mm connection is concerned, crystal clear. I respectfully suggest that you place this correspondence on the top of your file for ease of future reference for other *TasWater* employees to peruse or your externally engaged legal Counsel.

Charges Going Forward

If *TasWater* wish to install a bypass meter at their cost, then by all means attend to same. However this will not resolve this dispute. The options for a resolution that accord with law are as follows:

1. *TasWater* at its own expense remove the illegal infrastructure, namely the 100mm meter and block the 100mm pipeline under the Property that services the disused fire fighting infrastructure; OR
2. *TasWater* at its own expense remove the illegal infrastructure, namely the 100mm meter and if you wish for *TasFire* to have access to the 100mm pipeline for fire fighting services into the future, then Mr & Mrs Gilmour take no issue with it remaining in situ. Of course the responsibility and cost of maintaining this pipeline and paying for this infrastructure insofar as fixed costs and any variable water usage costs are concerned will be a matter for your office and *TasFire*. Mr & Mrs Gilmour will not be out of pocket in relation to this connection.

With either of the above options, Mr & Mrs Gilmour will not be paying any historical charges associated with this 100mm connection. If the Ombudsman is unable to convince your office of your legal position then any attempt by your office to recover charges for same will be defended before a Court of competent jurisdiction.

I look forward to receiving your response generally, but particularly in relation to those questions I have raised throughout this correspondence that require your attention, which I underlined for ease of reference.

Kind Regards,



Ryan Gilmour

Ph: 0417 582 622

"A"

12/11/03

Beach Retreat Tourist Park

30 B Old Bass Highway

Dyngvad 7325

Director Development Services

Dorset - Dyngvad Council

P.O. Box 168

Dyngvad 7325

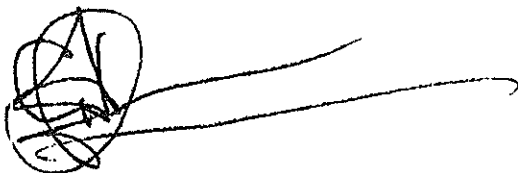
Dear Mr Kennedy,

DA 214/2003

We refer to our meeting on Wednesday 5th November 2003 with yourself, Evan Pardon & Paul West. It was agreed that the Council would reroute the sewerage rising main & water main around our property in June/July 2004, thus removing all encumbrances from the Tourist Park.

In view of this decision, we hereby withdraw the above Development Application. We will resubmit this application when Council have completed their work.

Yours sincerely



G.A. GILMOUR

C.C. Gilmour

C.C. GILMOUR



TW HPE ref: 19/94211

30 July 2019

Mr Ryan Gilmour
C/- Beach Retreat Tourist Park
30B Old Bass Highway
Wynyard TAS 7325

Sent via email: ryan_gilmour@hotmail.com

WITHOUT PREJUDICE SAVE AS TO COSTS

Dear Mr Gilmour

30B Old Bass Highway, Wynyard: Disputed account charges

Thank you for your time on 19 June to discuss the disputed account charges for 30B Old Bass Highway, Wynyard (the **Property**) belonging to Mr and Mrs Gilmour (the **Gilmours**), and your ongoing patience while I have familiarised myself with the considerable background involved in this matter.

As discussed, TasWater has invested significant resources investigating and responding to each of the Gilmours' separate complaints. As at 22 July 2019, the continued non-payment of the charges incurred on this account has resulted in a total of \$45,579.64 remaining outstanding to TasWater. No payments have been made to the account since 9 June 2017.

Having fully considered the history and circumstances relating to these complaints, I have determined that TasWater's position on the charges, as previously communicated, is correct and that the charges have been levied in accordance with TasWater's legislation and billing practices as approved by the Tasmanian Economic Regulator. My reasoning for this determination in relation to each disputed matter is set out in more detail below.

I appreciate, however, that the Gilmours' concerns relating to water and sewerage services at the Property have been longstanding, and at times, have not been promptly addressed by TasWater. In addition, my review of the matter reveals there has been considerable variation in the approach to charging for the 100mm water connection since 2004 by TasWater and its predecessors, resulting in significant distress and confusion for the Gilmours over the years. We are also well aware that further delays in resolving the matter will compound the Gilmours' outstanding debt to TasWater and ultimately place them in a more difficult financial position.

Settlement Offer

Notwithstanding my conclusion as set out above, in recognition of the extenuating circumstances set out above and in the interests of bringing the matter to a close, TasWater is willing to:

- a) Discount the total amount owing by the Gilmours by ten thousand dollars (\$10,000);



- b) Waive the fixed 100mm connection charge for the Property for the current billing period (i.e. July–September 2019);
- c) Fund the cost of necessary changes to the metering and connection configuration if requested by the Gilmours upon final resolution of the requirement for a 100mm connection for firefighting purposes at the Property; and
- d) Fund a review of TasWater's supply of water and sewerage services to the Property by an independent plumber to ensure a consistent understanding of the infrastructure at the Property going forward and identify possible cost saving efficiencies and repairs available for implementation by the Gilmours.

The three-month 'moratorium' on fixed charges for July–September is intended to provide the Gilmours with the necessary time to further investigate the need for the 100mm connection at the Property. In effect, acceptance of this offer would mean that the Gilmours would not be charged any fixed charges for the current (July–September) billing quarter.

Further conditions of the settlement offer set out above in principle are outlined on pages 5–6 of this letter.

Substantive Responses to Unresolved Matters

As noted above, TasWater's position is that the charges disputed by the Gilmours have been correctly levied in accordance with TasWater's legislation and billing practices approved by the Tasmanian Economic Regulator. On this basis, TasWater does not accept that any of the charges levied by it in relation to the Property have been unlawful. We are also satisfied that TasWater's predecessors acted lawfully pursuant to their governing legislation of the time and on this basis do not accept your assertion that the 100mm water meter at the Property was 'unlawfully' installed.

Set out below is TasWater's final position in respect of each of the substantive matters raised by you on behalf of the Gilmours but as yet unresolved, which I understand to be:

1. A request for financial assistance to repair leaking internal plumbing and/or a reduction in water usage charges due to leaking internal plumbing
2. Disputed fixed charges for sewerage services and the basis of the calculation of equivalent tenements (ETs) and
3. Disputed fixed charges for the 100mm water connection to the Property.

I note the complaint regarding alleged damage to private property has been resolved and refer to your email of 28 June 2019 in which you accepted TasWater's offer of an ex gratia payment of \$1,125.85 in full and final settlement of that complaint.

1. Request for TasWater assistance repairing leaking internal plumbing

I refer to your correspondence of 15 May regarding the leaking internal plumbing at the Property, and our response of 16 May. We appreciate the challenges faced by the Gilmours in relation to their internal plumbing and acknowledge the impact this may have on water usage. However, as previously advised on several occasions, TasWater is only responsible for infrastructure to the connection point of a property, and does not fund or otherwise offer assistance for the repair of private infrastructure.

In any case, I understand TasWater already provided the Gilmours with a 'water leak remission' of \$4,454.34 in April 2017, in recognition of the difficulties often experienced in detecting internal plumbing leaks. We have also committed to reading the meter on a monthly basis for a period of 12 months to enable greater visibility over water consumption at the Property. In this sense, TasWater



has acted reasonably towards the Gilmours in relation to their water leaks and is unable to offer further assistance or discounts on water usage charges.

2. Disputed fixed charges for sewerage services based on calculation of ETs

I refer to your correspondence of 15 May and our response of 20 May in relation to the calculation of ETs for the Property.

As previously explained, the ET charges applied to the account are correct and, in accordance with the pricing structure approved by the Tasmanian Economic Regulator, are adjusted on an annual basis effective 1 July each year.

Following notification of the internal plumbing leaks in 2017, the ETs for the Property were adjusted to account for the resulting increased usage in order to prevent overcharging. However, as water consumption at the Property is metered, the alternative method of calculating ETs for caravan parks (as set out in ASO1 of our Price and Services Plan) is not applicable. From 1 July 2018 the ET calculations for the Property were adjusted from 24.8 ETs to 15.4 ETs to account for the water leaks, and remain unchanged this financial year, as advised in a letter sent to the Gilmours dated 27 June 2019.

As the Gilmours are aware of the leaks in their internal plumbing and retain responsibility for repairing them, any continued increased water usage impacting ETs is not TasWater's responsibility to remedy, beyond the already adjusted ET calculations.

Once the Gilmours have repaired the leaking internal plumbing and reliable usage data for 12 months is available, TasWater will undertake an assessment of ETs at the Property and adjust as necessary. Alternatively, the Gilmours may apply to have a direct measurement of sewage flow at the Property, although this would require the Gilmours to install sewage flow meters at their own cost.

Again, we encourage the Gilmours to make a submission through the public consultation phase of TasWater's next Price and Service Plan if they feel there is an alternative to the current methodology applied when calculating ETs for caravan parks.

3. Disputed fixed charges for the 100mm water connection to the Property

I refer to your latest letter of 7 June 2019 and previous correspondence regarding the fixed charges for the 100mm water connection to the Property. Following our conversation of 19 June, I understand the Gilmours continuing refusal to pay the outstanding charges for the 100mm connection is premised on two primary concerns, in particular:

- The alleged 'unlawful' installation of the 100mm water meter by the Waratah-Wynyard Council (Council) in or around 2004; and
- The legal necessity (or alleged lack thereof) for firefighting infrastructure on the Property requiring service by a 100mm water connection.

Alleged 'unlawful' installation of the 100mm water meter

In your letter of 7 June 2019, you allege that Council's installation of the 100mm meter on the Property in 2004 was unlawful on the basis that the *Sewers and Drains Act 1954* (Tas), under which Council was responsible for providing sewerage services, did not cover 'water mains and associated infrastructure'. You also assert that in the absence of any legislative head of power, there was a need for a 'traditional contract' between Council and the Gilmours to allow lawful installation of the 100mm meter. You also note that no such agreement was ever entered between the parties. However, we disagree with your assertions and do not agree that a contractual arrangement between the Gilmours and Council or the consent of the Gilmours was required for installation of



the 100 mm water meter in 2004. Our reason for disagreeing with you is that the Council had the necessary authority to install the meter under the *Waterworks Clauses Act 1952* (Tas), as further explained below.

Under the *Waterworks Clauses Act 1952* (Tas), Council had responsibility for water infrastructure up to the boundary of a property (the boundary of a property representing the connection point for the purposes of water services). As water to the Property was supplied via a 100mm connection at the boundary, Council had the power to install a meter in this pipe and, without becoming in any way liable, affix it to the Gilmours' land pursuant to section 40 of the *Waterworks Clauses Act 1952* (Tas) (see also sections 189 and 191 of the *Water Management Act 1999* (Tas)).

Accordingly, the Council minutes of 17 November 2003 (as referred to in your correspondence) do not refer to, or envisage, any need to obtain the Gilmours' consent for installation of the water meter. The minutes instead relate to a request for formal agreement for transfer of ownership of the water main, which (although potentially relevant to issues such as maintenance) is immaterial to Council's authority to install a meter to measure water supply at the connection point of a property. Had Council retained ownership of the 100mm water main the result would be the same for billing purposes in that they would still have had the authority to install a meter to measure water flow through the 100mm connection servicing the Property and charge accordingly.

Putting to one side the legality of the meter installation, the following matters are also relevant when assessing TasWater's reasonableness in levying charges for the 100mm connection since its incorporation:

- TasWater understands that both the 100mm connection, and the transfer of ownership of the 100mm water main, has been of significant benefit to the Gilmours since they purchased the Property, principally through the approval of various development applications and operation of the Property as a tourist operation. Without a 100mm connection, development and commercial operation of the Property may not have been possible. Further, if Council (and subsequently TasWater) had retained ownership of the 100mm water main, development of the Property would have been significantly restricted to ensure appropriate access to their infrastructure.
- Installation of the 100mm meter in 2004 was a clear indication that, despite any previous misunderstanding on the Gilmours' part, the 100mm water main remained in situ and charges were intended to be levied for its use.
- The Gilmours have paid charges associated with the 100mm connection (whether at the full or discounted rate) since installation of the meter in 2004.
- To date, the Gilmours have failed to investigate the feasibility of downsizing or bypassing the 100mm connection, despite encouragement from TasWater to do so.

Legal requirement for firefighting infrastructure on the Property

Following our conversation of 19 June, I understand you are in the process of obtaining clarification from Council, surveyors and the Tasmanian Fire Service (**TasFire**) regarding the legal necessity (or lack thereof) to retain fire hydrants and fire hose reels (**firefighting infrastructure**) on the Property.

As discussed, and as explained multiple times to the Gilmours, the need to retain firefighting infrastructure on the Property (which is in effect determinative of the requisite water connection size) is not a matter for TasWater to assess or determine. Rather, such a determination can only be made by a registered building surveyor in consultation with TasFire. I understand that you are challenging the report of 12 June 2019 from Benchmark Building Surveyors which confirms the need



to retain a 100mm water connection to the Property for firefighting purposes. TasWater will await instruction in this regard.

In our understanding, and subject to contrary instruction from you based on the findings of a registered building surveyor, the existing firefighting infrastructure must remain on the Property and be serviced by a 100mm connection. In this regard, TasWater stands by its previous offer to install a bypass connection to ensure the 100mm connection operates as a dedicated fire service going forward. As previously offered, TasWater is still willing to undertake this installation at its own expense. Upon installation of a bypass meter, the Gilmours would only be charged the dedicated fire service rate for the 100mm connection, which as outlined in our current Price and Services Plan is 25 per cent of the fixed charge for the relevant connection size.

Alternatively, should you be able to provide confirmation from a registered building surveyor that the firefighting infrastructure is *not* required in order for the Property to operate as a tourist operation, TasWater is willing to implement the necessary changes to ensure the Gilmours are not charged for this connection going forward. This may include removal of the meter and/or downsizing of the 100mm connection. In these circumstances, we would however strongly encourage the Gilmours to carefully consider the impact any decision to downsize or remove the 100mm connection on future development plans, property value, insurance policies and associated premiums and other operational requirements for the Property.

Regardless of the necessity for the 100mm connection going forward, TasWater maintains its position that the outstanding charges for this connection are due and payable, and that any historical adjustment of charges is unnecessary.

In relation to the serviceability of the firefighting infrastructure at the Property, as private property TasWater is not under maintenance obligations that may apply to public firefighting infrastructure and is unable to comment on its operational status. This is a matter for the Gilmours to raise with TasFire. As an aside I note that it is the fire hydrants, and not the fire hose reels, that require a 100mm water supply for their operation. Accordingly, your assertion that the fire hose reels are condemned and not operational will have little if any bearing on the need for the Property to be serviced by a 100mm connection.

Further Conditions of Settlement Offer

As set out above, and notwithstanding our determination that all charges imposed by TasWater and its predecessors have been lawful to date, TasWater is willing to provide significant further concessions and benefits to the Gilmours. In particular, TasWater is prepared to:

- a) Discount the total amount owing by the Gilmours by \$10,000 as follows:
 - i. A \$5,000 reduction in the amount owing on the account for the Property, immediately upon entry by the Gilmours into an appropriate payment plan for the outstanding charges on the account (**Payment Plan**);
 - ii. An additional \$5,000 reduction in the amount owing on the account, to be applied after 6 months of successful payments as agreed under the Payment Plan;
- b) Waive the Gilmours' fixed water charges in relation to the Property for the current billing period (July–September 2019) providing a total benefit of \$2,143.50;
- c) Upon final resolution of the necessity of a 100mm connection at the Property, undertake the necessary changes to the metering and connection configuration as follows:
 - i. Should TasWater receive the necessary instruction (with supporting documentary evidence from a registered building surveyor) that the 100mm connection is not

Jeremy Morse
Department Manager Legal Services

13 September, 2019

By email only: Jeremy.Morse@taswater.com.au

WITHOUT PREJUDICE SAVE AS TO COSTS

Dear Mr Morse,

**30b Old Bass Highway, Wynyard ("the Property") – 100mm Meter Dispute, Overcharging
ETs & Excess Water Charges**

I refer to your letter of 30 July, 2019.

I will endeavour to address each of the three matters in dispute using your headings for ease of reference.

I raise a number of basic questions throughout this correspondence for you to consider and respond to along with requests for details surrounding charging. I have made these questions and requests for information easy to isolate from the rest of the correspondence by underlining and placing them in **bold**. I would appreciate a response to those questions **within fourteen (14) days** of the date of this letter.

At the commencement however, it necessary for me to take the opportunity to point out a number of general matters of significance:

1. You claim your abovementioned correspondence is 'without prejudice save as to costs' over the entire document. Whilst I accept you can claim privilege over the contents under the headings "Settlement Offer" and "Further Conditions of Settlement Offer", there is no lawful right to claim privilege over the rest of the document. The headings dealing with the three areas of dispute are not discussions in the context of a genuine settlement but rather the communication of TasWater's position to a customer by an employee of same as it is required to do under its *Complaints, Enquiries and Disputes Management Policy* which in turn derives from the *Water and Sewerage Industry Act 2008* and *Water and Sewerage Industry (Customer Service Standards) Regulations 2009*. There are of course issues of abuse of power and other matters which can be found in Part 10 of the *Evidence Act 2001* which can be raised but I will leave my comment at that for the time being as I have no doubt you will accept the above after giving it some further careful consideration.
2. Not to be confused with 'without prejudice' communications is 'privileged information'. The Report you refer to from Mr Shane Deverell dated 12 June, 2019 is privileged as it contains entirely 'privileged information' and should never have been disclosed to you. How do you know its privileged when you were provided a copy you may ask? Section 28 of the *Building Act 2016* makes clear that a Building Surveyor must be engaged by the owner of the premises which are Mr & Mrs Gilmour. That is, the legal relationship exists between Mr & Mrs Gilmour and the Surveyor. From what I understand, some person at the *Waratah-Wynyard Council* without Mr & Mrs Gilmour's authority has provided you with this

document. Privilege is therefore claimed over same. Please attend to the following accordingly:

- (a) Dispose of any and all copies of Mr Deverell's Report dated 12 June, 2019 you may have;
- (b) Noting that you hold a current Corporate Practising Certificate, provide an undertaking that the Report will not be referred to or relied upon henceforth; and
- (c) Advise as to which person at the *Waratah-Wynyard Council* provided you with Mr Deverell's Report, by what means, when this occurred and provide a copy of the correspondence you received from the employee of the Council which accompanied the Report.

If you refuse to attend to the above, we will no doubt have the privilege argument over a *voir dire* before the Magistrates Court or Supreme Court in due course. To avoid any future confusion, please confirm you are agreeable to resolving the privilege dispute as outlined above, and if not, why not?

3. In the second paragraph of your correspondence you refer to the "*significant resources*" being utilised by TasWater in investigating and responding to each of the complaint, yet just a few paragraphs down the page you acknowledge the longstanding concerns of Mr & Mrs Gilmour which you accept have not been "*promptly addressed by TasWater*" including variations in the approach to billing causing distress and confusion to Mr & Mrs Gilmour. Herein lies the problem. Not only does the time taken at your end to review matters not concern myself nor Mr & Mrs Gilmour, but it is the complete failings of TasWater's approach to resolving this dispute that has caused it to go this far, including a lack of basic understanding of the law that governs your office and basic common law contractual principles that has lead to this position. As a monopolistic supplier of water you are expected to be a model litigant before a court and a model organisation when it comes to dealing with complaints and/or customer concerns. This is why you are legislated to have certain matters in your *Complaints, Enquiries and Disputes Management Policy*. It would therefore be remiss to not remind you that the time this is taking me to explain the law to you should not go unnoticed as you can rest assured that if there were another competitor offering water supply and sewerage discharge services in this State, Mr & Mrs Gilmour would have moved their business to them ten years ago.
4. Finally, I have never received a response to the questions I raised in my letter to your Ms Sophie Rowlands dated 7 June, 2019. I **attach** a copy of that correspondence for ease of reference and note that I originally underlined those questions in that letter to make it easier for your office to respond to. You should note that those questions came about as a result of me forming the opinion that I was being misled by your Ms Rowlands in her letter to me dated 17 May, 2019. Hence a response to those questions raised is particularly important. I would appreciate said response to be provided to me **within fourteen (14) days** of the date of this correspondence.

Settlement Offer & Further Conditions of Settlement Offer

Your offer is rejected.

Disputed Fixed Charged for the 100mm Water Connection to the Property

I attach for you the following:

1. Letter from General Manager of the Waratah-Wynyard Council, Mr Shane Crawford dated 5 July, 2019;
2. Report from Mr Barry Magnus of Braddons Building Surveying dated 16 August, 2019.

Insofar as I am concerned the above speak for themselves.

The Report from Mr Magnus merely confirms what we have told Council, Cradle Mountain Water and now TasWater repeatedly over many years. I explained to your Ms Rowlands in great detail in my letter of 7 June, 2019 the interplay between the *National Construction Code* ("NCC") and the *General Fire Regulations 2010*, particularly regulations 4 and 5 therein. Not only did the questions raised in that correspondence go ignored by your office, but the fact you are unable to appreciate the importance of such provisions in this dispute is particularly troubling given you are the water authority.

The letter from the General Manager of the Waratah-Wynyard Council confirms the obvious, but I provide it to you in any event as it confirms there was no agreement as sought to be obtained in accordance with the Council minutes of 17 November, 2003 ("the Minutes") and thus puts the scepticism in your aforementioned correspondence to rest.

The reality is that your argument for historical and future payments for fixed costs associated with the meter should therefore end here. You now have the following evidence surrounding the 100mm meter:

- a. It was and continues to be a piece of public infrastructure that was never isolated for the use of Mr & Mrs Gilmour as discussed and foreshadowed in the Minutes;
- b. There was never any agreement reached between the Council and Mr & Mrs Gilmour to take any ownership or responsibility for the 100mm meter as per the Minutes;
- c. The Property is adequately supplied by all water entering through the 32mm meter;
- d. There is no legal requirement (nor has there ever been for the duration of Mr & Mrs Gilmour's ownership) for the Property to have a 100mm connection let alone any fire fighting infrastructure in the form of fire hose reels and fire plugs.
- e. No development application ever lodged by Mr & Mrs Gilmour has ever been made subject to the 100mm water main;
- f. Mr & Mrs Gilmour have received no individual benefit of having the 100mm water main on their property;
- g. Mr & Mrs Gilmour have been disputing being charged for 100mm meter ever since charges were attempted to be levied when the water authority moved from Council to the Corporation;

- h. Discussions with Council employees prior to the 100mm meter being placed on the Property saw Mr & Mrs Gilmour advised that the 100mm connection that loops through the yacht club through the caravan park and then along the foreshore and under the road connecting back into a water main on the Old Bass Hwy would be rerouted along the beachfront along with the rising sewer main;
- i. Mr & Mrs Gilmour have worked tirelessly with your office and the office of your predecessors to have this matter resolved. From the various correspondence I have to hand it is clear that there has been a complete lack of understanding of the circumstances and the law surrounding the matter from your end evidenced by the varied and ever changing positions being taken by your office in respect to this connection which has resulted in significant time being wasted by Mr & Mrs Gilmour and myself as well as distress to Mr & Mrs Gilmour which I note you concede.

The latest position apparent from your correspondence is that you think it is appropriate to ignore all of the above points, ignore the reasoning as to why the 100mm meter was placed on the Property to begin with and attempt to justify Council's actions by alternative means to what was intended to be achieved as evidenced in the Minutes, to enable you to charge a customer for something they never wanted nor needed and have disputed from the outset. There are many concerns both moral and legal arising from the above, but keeping it simple, I don't believe even you would argue that this is the way for a business to treat its customer.

Before turning to consider the *Waterworks Clauses Act 1954* ("the Act") in detail (which I note your office has not raised previously at any point), I will for one moment consider your logic regarding s40 of the Act. In summary I see your logic as follows:

- Council did not need consent to put the 100mm meter on the Property as a result of s40 of the Act;
- Given Council had the authority to install the 100mm meter (irrespective of need), we can therefore charge our fees for it irrespective of any other factor as the Economic Regulator said so.

It is always a good idea to step back and consider how this logic works by applying it to other similar scenarios. If this were the correct interpretation of s40 and was in line with the Act as a whole, this would give the Council and now TasWater the ability to install whatever size connection or meter to a property they see fit. In this case, using your logic, you would argue that if TasWater wanted to install 100mm meters to all residential properties around the state, notwithstanding homeowner(s) objecting to such actions and there being no need legal or otherwise for such a meter to be put in place, TasWater lawfully could do so and then lawfully could charge the fixed costs associated with such a meter as the Economic Regulator said so. That is, your logic would have you justifying increasing a homeowners annual fixed meter charges of \$342.96 per annum (20mm meter) to \$8,574.00 (100mm meter) despite there being no justification for this unilateral decision of the Corporation. Of course you cannot do that for many reasons, one such reason being TasWater's own *Water Metering Guidelines v2.0* which provides that:

*"All water meter sizes are to comply with relevant standards. For large residential and non-residential developments, the size of the property service pipe and water meter is to be determined by the **property owner** or authorised agent. The **owner** or applicant is responsible to ensure pressure and flows will be adequate and sustainable. This may*

require the owner/applicant to engage the services of a Registered Plumber or Hydraulic Consultant.

The sizing of a residential boundary water meter and the associated property service connection shall be determined by using the 'flow rates and loading unit table' and 'probable instantaneous demand table' set out in AS/NZS3500.1 Section 3 – Sizing of Water Services”.

The point to be taken from the above is that the argument you raise to justify charging for an excessively large meter for the Property is against your very own Policies.

I will put aside the considerations of common law contract for a moment and turn to working through the Act, given you believe it supports TasWater's position. I will start by saying that your interpretation of s40 and the Act in general is misguided. You appear to have viewed the sections relied upon in isolation from the intent of the Act, Fire Regulations, the NCC and the various circumstances that gave rise to the 100mm meter being placed on the Property to begin with insofar as they are required to be considered under the Act itself.

The intent of the Act is to enable the supply of 'pure and wholesome' water, sufficient for domestic purposes for the use of all inhabitants of a water supply district entitled to demand a supply¹. Without going into detail, my view of the Act suggests that many of the provisions within the Act are in fact redundant due to the various legislative reforms in recent years and this no doubt is why it has seen such significant amendments in recent years.

Section 18 empowers citizens by placing the requirement on the 'Undertakers' to install certain water connections for **domestic uses** to only those that are:

- (a) entitled to demand a supply under the Act; and
- (b) are willing to pay the proper rates and charges for it.

This section is of particular significance as not only does it set out the intent of the Act, but also makes clear that it is designed to cover domestic water connections **and** only when the above two preconditions are satisfied.

Using the above, let us now work that back into the scenario at the Property and to this end I refer you to the various lettered points on page 3 herein and further:

- (i) The Property is used for both domestic and commercial purposes; and
- (ii) A 100mm connection is not a domestic connection by nature and neither was it in practice, given it traverses the Property as piece of public infrastructure and is only accessible through dedicated fire fighting connections. (see the Report from Mr Barry Magnus together with the Minutes).

In light of s18 of the Act not being satisfied in respect to the 100mm connection, then Council in unilaterally deciding to supply water to the 100mm connection must by implication have determined it necessary to maintain this supply in order to comply with the Fire Protection provisions of the Act as a piece of public infrastructure (see s37). In support of this position are the following facts:

¹ See s18 and the Second Reading Speech – The Hon. Bryan Green, *Water Legislation Amendment Bill 2013*

- a. No charges were ever rendered by Council for this connection or associated meter both before and after the 100mm meter was placed on the Property; and
- b. In contrast to what was foreshadowed to occur in the Minutes, no valve was ever installed on the eastern end of the property to turn the connection into a private piece of fire fighting infrastructure as no agreement was ever reached with Mr & Mrs Gilmour as to same (see letter from the General Manager attached).

Under Item 6 of the Minutes it reads:

"There is a water main that loops through the yacht club through the caravan park and then along the foreshore and under the road connecting back into a water main on the Old Bass Hwy. Currently there are three water meters located within the property that Council read and service. It is possible to isolate the main to the property so that it can be utilised as a private fire service by installing a valve on the eastern end. This would then allow Council to install a single water meter to the property and therefore provide future savings."

In addition, under Item 7 there is comment regarding risk, noting that: *"Additionally, if the water main were to break, there also could be significant risk"*.

From the above we learn that Council have formed the view that they no longer desire to keep the 100mm connection as a piece of public infrastructure for fire fighting purposes and thus see an opportunity to save costs by entering into discussions with Mr & Mrs Gilmour to discuss installing a valve at the eastern end of the Property which would isolate the 100mm connection on the Property from the rest of the public infrastructure connecting to same off the Property. Once this occurred, Council intended to have all water services to the Property serviced by a single meter to save them effort in reading meters into the future. This culminated in Council resolving to enter into negotiations with Mr & Mrs Gilmour, seeking that they

"...formally agree that they are prepared to accept ownership and future responsibility for the 100mm water main within the property once the work is completed".

What you ought to take from the above, is that given such agreement with Council was never reached and that Mr & Mrs Gilmour never wanted the 100mm meter or connection nor was there a legal obligation on them to have same, if Council did not want to maintain the 100mm connection as a piece of public infrastructure, then they could have simply shut off supply to the 100mm connection and maintained supply to the 32mm connection on the Property in line with their requirements under s18 of the Act. Hence the only conclusion to draw, is that the 100mm pipeline and associated meter has and remains in existence as public infrastructure in line with the requirements to maintain same under the Act.

You must keep in mind that at the core of the dispute is not the tort of trespass, but rather the ability to lawfully charge Mr & Mrs Gilmour the fixed costs for the 100mm meter. It should be clear now that the existence of the 100mm meter at all relevant times can only be justified for the purposes of maintaining public infrastructure. It is thus no different to a regular home in this state which abuts onto a public road with public fire fighting infrastructure underneath it and fire plugs at various points along same.

You have of course mentioned s40 of the Act and whilst misguided as to its application in this scenario, I will nevertheless address it. Noting the purpose of the Act and its protections generally

for the homeowner/customer, you would first need to be able to justify Council's decision to place the 100mm meter on the Property at first instance. Given the only justification for such a large meter is to service public infrastructure in circumstances where no agreement to isolate the connection for a private fire service was ever reached and for all the reasons stated above, that is not possible.

If due to some marvel you convince a Magistrate or Judge as to the legitimacy of the decision to install the 100mm meter at first instance for a reason other than to maintain public infrastructure, the Court must then consider the supply of water to determine whether the large costs associated with a 100mm meter to a homeowner are justified. Not only does the water usage of the Property make clear it is not, but s25(2) of the Act provides for the ability to correct errors whereby the **individual circumstances** and the **extent of supply** are taken into account regarding charging for a non domestic connection. Once again this takes us back to a decision by Council and now your office to maintain public infrastructure for the public benefit and no doubt appease TasFire.

In this case, irrespective of the size of the meter on the Property, the charging for same ought to have been at the 32mm rate which is exactly what the status quo was for the entire duration of Council's control of the water infrastructure. This in itself is a particularly telling piece of evidence.

You go on to mention a number of factors you say are "relevant" which I respond to in the same order in which you raise them:

- You state that your office understands that the 100mm connection has been of "significant benefit" to Mr & Mrs Gilmour since purchasing the Property as it has been required for the approval of various development applications and the commercial operation of the Tourist Park. This I find interesting as none of it is true! As goes the adage 'he who asserts must prove', please provide me with the following:

- A list of those applications for development which have been made subject to the 100mm connection?
- A list of those applications for development which wouldn't have been legally possible without the 100mm connection in place;
- Details of who provided you with this incorrect information and when?

- I will refer to this point in full: *"Installation of the 100mm meter in 2004 was a clear indication that, despite any previous misunderstanding on the Gilmours' part, the 100mm water main remained in situ and charges were intended to be levied for its use."* With respect, grammatically this does not make sense and thus makes it difficult to respond to. I am guessing you are trying to say that the fact the meter remains in situ means Mr & Mrs Gilmour have some kind of knowledge that they would be charged. As a matter of law this holds no weight. Factually such a statement is incorrect too as it fails to acknowledge the Minutes and the failure of Council to approach or reach agreement with Mr & Mrs Gilmour in relation to same, the fact Council never charged for the 100mm meter during their tenure in control of the water authority despite the ability to do so under the Act, the fact this dispute has been ongoing with your office and your forbearers Cradle Mountain Water for in excess of ten (10) years et cetera. I could go on, but the point is clear.
- You suggest that as Mr & Mrs Gilmour have made payment of some charges associated with the 100mm meter previously that somehow they have assumed liability. Yet you assert this

whilst on page one of your letter you state: "...the Gilmours' concerns relating to water and sewerage services at the Property have been longstanding, and at times, have not been promptly addressed by TasWater". Then continue: "...my review of the matter reveals there has been considerable variation in the approach to charging for the 100mm water connection since 2004 by TasWater and its predecessors, resulting in significant distress and confusion to the Gilmours over the years". I trust the irony does not go unnoticed by you. This point has no merit.

- You place the onus back on to Mr & Mrs Gilmour stating that they have failed to investigate the feasibility of downsizing or bypassing the 100mm connection, despite encouragement from TasWater to do so. I refer you to my quotes from page one of your correspondence above and pause to remind you that the errors in this matter have resulted from the lack of competence shown by both your office and your forbearers, including the Council in placing the meter on the Property at first instance without reaching agreement with Mr & Mrs Gilmour beforehand. These issues are something your office ought to be apologetic for and address for the future so that no further customers have to go through what you have caused Mr & Mrs Gilmour to endure, noting that there has been consistent non compliance with your 'Complaints, Enquiries and Disputes Management Policy' and the TasWater Customer Charter from the outset. As a sad indictment on the way TasWater have dealt with this matter is that it has taken me to step into the shoes of Mr & Mrs Gilmour to finally see your office take heed of the matter, give at least some consideration to the substance of complaint, if not struggle to understand the legal implications of certain actions.

If it were not clear previously, I hope now you can accept the errors of your predecessors, cut your losses and accept the only fair and lawful outcome is that the fixed water infrastructure costs associated with the Property are for a 32mm meter both now and historically. There will be no amicable resolution to this aspect of the dispute through any other alternative. You may come and undertake the works to remove the 100mm meter at a date and time convenient to your office at TasWater's expense.

In light of the above, I demand you provide the following information in an easily understood manner:

1. A list or spreadsheet of payments made by Mr & Mrs Gilmour for fixed water meter charges associated with the Property from the creation of Cradle Mountain Water in or around 2009 through the commencement of TasWater on 1 July, 2013 to date;
2. A list or spreadsheet showing the fixed charges for a 32mm meter for each year commencing from the creation of Cradle Mountain Water in or around 2009 through the commencement of TasWater on 1 July, 2013 to date;

Once the figures are agreed as being accurate, the difference between the two will reflect the amount Mr & Mrs Gilmour owe TasWater or more likely, I suspect the amount paid by Mr & Mrs Gilmour to date will greatly exceed the costs associated with a 32mm meter for this period and thus there will be a refund sought from your office for Mr & Mrs Gilmour

You are required to provide the above as:

- (a) The TasWater Customer Charter July 2018 says so (see clause 9.1 therein); and

- (b) All persons and Corporations are required at law to mitigate their losses and this is particularly true for TasWater being a Council owned monopolistic company which is required at all times to act as a model litigant.

I look forward to receiving this information accordingly.

Request for TasWater Assistance Repairing Leaking Internal Plumbing (Excess Water Charges)

I refer you to my letter of 15 May, 2019 which provided you the information you sought to confirm the leaks that caused the excess water usage for a period of time.

The letter from Mr Purchase of your office dated 16 May, 2019 advised amongst other things that: *"We will commence reading the water meter on a monthly basis to enable greater visibility of water consumption at the property."* You will note from the readings taken since the aforementioned correspondence that water usage has been negligible and that the letter from plumber Mr Stephen Keene confirmed the circumstances surrounding the leaks that he was tasked with repairing.

You are able to offer remissions on water charges with a stroke of the pen and but for the fact a previous remission was given some years ago for a completely separate leak, you say Mr & Mrs Gilmour would be eligible for a 50% remission. When you therefore say that TasWater is "...unable to offer further assistance or discounts on water usage charges" you are not correct. You are certainly able to as it is not a regulated activity. What you actually mean is that TasWater is simply unwilling to offer further assistance or discounts towards these charges.

Unfortunately, given the effort and expense that Mr & Mrs Gilmour have been put to in dealing with the variety of issues caused by your office, including but not limited to:

- the costs of engaging building surveyor Mr Magnus and plumber Mr Keene to provide reports to appease your office;
- the lack of effort made to understand and resolve the issues faced by Mr & Mrs Gilmour over many years which has caused significant stress and anxiety;
- the lack of goodwill shown by your office to date generally in respect to all matters; and
- the attempt to double charge Mr & Mrs Gilmour for their misfortunes by increasing ETs to exorbitant levels which do not coincide with *Price and Service Plan 3* ("PSP3") nor represent the discharge they are placing through sewerage system

They, as you will appreciate if you put yourself in their shoes, are reluctant to pay for water for which they received no benefit. That said, the offer made previously stands. That is, they are willing to pay for 50% of the excess water charges outstanding. This offer is however contingent upon agreement being reached in respect to both the 100mm meter dispute and the ET dispute in line with what is put forward in this correspondence. To provide your office with funds at this point in respect to this isolated matter in circumstances where your office more than likely owes Mr & Mrs Gilmour a significant refund for years of overcharging and has had the benefit of those funds for some time would only increase the injustice in this matter.

Irrespective, of whether you accept this offer or not, I ask that you **provide me with a summary of the excess water charges you say are owing including details of the amounts used during each period and associated excess charges so that Mr & Mrs Gilmour can reconcile same from a single legible document as you are required to provide by law.**

Disputed Fixed Charges For Sewerage Services Based on Calculation of ETs

Unfortunately, your conclusion regarding the ways in which ETs can be calculated is derived from an incorrect understanding of PSP3 and what it seeks to achieve.

You state that: *"Following notification of the internal plumbing leaks in 2017, the ETs for the Property were adjusted to account for the resulting increased usage in order to prevent overcharging".* What do you mean by this? If you are saying you adjusted the ETs downwards to take into account the loss of water that seeped into the ground (thus not entering into the sewerage system) due to the leaks, then your next statement: *"...as water consumption at the property is metered, the alternative method of calculating ETs for caravan parks (as set out in AS01 of our Price and Services Plan) is not applicable"* cannot hold true. I would appreciate you clarifying the point you intended to make here as it appears you are both supporting my submission that TasWater has the ability to assess ETs to achieve fairness to a customer when circumstances warrant it, but at the same time, refuse to do so in the case of Mr & Mrs Gilmour in this instance. They are mutually exclusive positions to hold and require further explanation.

The problem when it comes to this aspect of the dispute, is that nobody at your office, including yourself has given any detailed analysis or response to the matters I have raised previously. To focus your thoughts and to better understand the position of TasWater and its understanding of PSP3, I ask the following questions and seek a response to same within fourteen (14) days of the date of this correspondence:

1. Do you accept that ETs are a measure of the load a property places on the sewerage system? If not, why not?
2. Do you accept that the water supplied to the Property that has been leaked has not entered the sewerage system owned and maintained by TasWater? If not, why not?
3. Where can I find in PSP3, legislation or any other legal document that when a property is metered, an alternative means of calculating ETs cannot be applied?
4. How do you derive a figure of 15.4 ETs for the Property in light of your Customer Liaison Officer Mr Brendon Lehner noting in writing in his letter dated 24 April, 2017 that the daily average normal water use was 2.55kL? Please explain including providing the method of calculation adopted to derive the figure of 15.4 ETs?
5. Do you accept that PSP3 explicitly provides the ability for TasWater to assess ETs on the Property on a case by case basis when circumstances warrant it? If not, why not providing specific references to PSP3, legislation and case law that support your interpretation?
6. If you accept PSP3 allows to TasWater to assess ETs in certain circumstances, what circumstances does TasWater say would allow such an individual assessment to be carried out (please include specific references to PSP3, legislation and case law that support this interpretation)?
7. Do you accept that the circumstances outlined in this correspondence and my letter to Ms Katie Hooper dated 15 May, 2019 warrant an individual assessment when it comes to ET charges rendered for the Property? If not, why not?

8. As reasoned in my letter to your Ms Katie Hooper dated 15 May, 2019 on what basis do you say that 8.0 ETs is not an appropriate sewerage charge rate for the Property in this instance (please provide details)?

With the above questions raised for you to respond you, I will take you through the application of PSP3 when it comes to the charging for ETs and how it applies to the Property.

PSP3 defined an ET as a measure of the load a property places on the sewerage system whereby one ET is considered to be the annual sewerage discharge from a single residential dwelling under dry weather flows which is set by PSP3 at one ET being 200kL per annum. All calculations for premises other than residential dwellings are then based off this standard rate.²

9.7.3 of the PSP3 notes the steps TasWater is to undertake in calculating ETs. I reproduce same below:

"1. Combined data sources such as site visits, local knowledge, Google maps, direct customer contact and council data, are used to ascertain the property type and associated property attributes. ETs for identified non-residential customers (eg commercial, industrial, primary industry, and community services) are determined based on their respective category and, within that category, the other relevant parameters including number of beds or rooms, number of staff and students, and gross floor area and/or applicable amenities

2. Attribute a default one (1) ET to all identified standard residential customers

3. Identify customers who have a property within serviced land that is not physically connected to TasWater's infrastructure but which has the ability to connect. These customers are charged at 60 per cent of the standard ET rate for a residential dwelling.

The schedule of the ET rates for different industries/property use types is provided at Appendix 13.

We have made some refinements to the schedule of ETs to increase consistency and to reflect changes in water use and resultant sewerage demand for different land use types. Some land uses have had further reductions to reflect the proportion of their sewerage load that is likely to be trade waste. These are noted in the ET schedule.

This list of categories is not exhaustive and we have the ability to assess the number of ETs on a case by case basis if the circumstances warrant it. For connections with multiple uses, we can combine these to calculate the total number of ETs (emphasis added)."

The above you should find particularly interesting as it is directly relevant to Mr & Mrs Gilmour's scenario and essentially renders your response of no value. In summary you must accept the following:

- Your standard method of calculating ETs for the Property can be assessed and varied on a case by case basis and this does not hold you to simply the alternative means of calculating ETs under AS01 of PSP3.
- Whether a property is metered or not, when a dispute arises and the circumstances warrant it, TasWater must consider all factors of relevance to determine whether the ET

² PSP3 at p284

charging method imposed is appropriate including consideration of the factors outlined in 9.7.3 of PSP3 and the purpose of PSP3 generally.

- ETs are calculated based on an assumed discharge factor³. Once you are aware that the discharge into the sewerage infrastructure does not equal the water being consumed, you are on notice that the 'normal' method of calculating ETs is not appropriate to the circumstances of the Property and thus consideration to alternative methods of calculation to achieve fairness is appropriate.
- PSP3 can be regarded as a guide only as it is subject to alternative ways to calculate ETs and individual assessment. Moreover, this makes a great deal of sense given PSP3 is based on NSW Water Directorate, *Section 64 Determinations of Equivalent Tenements Guidelines 2017*⁴

Now let us turn to the circumstances facing Mr & Mrs Gilmour. They are as follows:

- Leaks have been occurring on the Property for a period of time which has caused for an increase in the variable water charges being levied.
- The Leaks have been acknowledged and accepted by TasWater and proof has been provided to TasWater in the form of a report from a plumber, Mr Stephen Keene confirming this fact.
- When the water leaks occur, they occur in the piping which sits approximately 1m underground and with the location of the underground water piping on the Property being just 20m or so from the beach, the sandy soil surrounding the pipe drains the leaking water away from the surface such that the leaks are not visible on the Property as they do not display themselves as a 'bubbling' type surface leak (see plumber, Mr Stephen Keene's Report).
- The water that is leaked and for which Mr & Mrs Gilmour receive no benefit from does not enter into the sewerage system and thus no additional stress is put on same as a result of the increase in water flow through the 32mm connection.

Thankfully, this issue was given some consideration by your then Customer Liaison Officer Mr Brendon Lehner with his conclusions placed into writing in a letter dated 24 April, 2017. His analysis found that the daily average normal water use was **2.55kL** when leaks were excluded.

Noting that one objective of PSP3 is to achieve consistency and fairness across industries⁵, I assisted your understanding of the problem by obtaining recent accounts from local competitors to extrapolate data in order to determine just how significantly Mr & Mrs Gilmour were being over charged for wastewater and sewerage services. Upon extrapolating the data (see my letter to your Ms Katie Hooper dated 15 May, 2019) the following information of value was obtained:

1. Compared to *LeisureVille*, Mr & Mrs Gilmour use just 31.02% of water. That is, *LeisureVille* use 3.22 times more water than Mr & Mrs Gilmour at the Property.

³ Ibid at p127

⁴ Ibid at p127

⁵ Ibid at p127

2. Compared to *The Waterfront Wynyard*, Mr & Mrs Gilmour use just 43.22% of water. That is, *The Waterfront Wynyard* use 2.31 times more water than Mr & Mrs Gilmour at the Property.
3. *LeisureVille* have 23 separate buildings used for accommodation, 9 of which are villas which are capable of housing 4 or more persons. Mr & Mrs Gilmour have a total of 14 buildings on the Property with only 2 of these properties capable of housing 4 or more persons. Therefore in terms of structures linked to the water and sewerage system, *LeisureVille* have 64% more buildings on their property connected to the water and sewerage system.
4. *The Waterfront Wynyard* have 29 separate accommodation units on their property, each of which is connected to the water and sewerage system. This represents 107% more accommodation structures connected to TasWater infrastructure for water and sewerage than the Property.

Despite the above large discrepancy in water usage, the number of pieces of infrastructure and the number of rooms (all of which are to be considered under clause 9.7.3 of PSP3), taking the period from 2009 to date, it is evident that the lowest ET ever charged for the Property was 11.6 and the highest was 24.8. Moreover, extrapolating those figures evidences an average ET charge for the Property of 16.49 (rounded to two decimal places). This is an extraordinarily high amount compared to others operating in this sector as evidenced by the above two examples. Indeed, comparing this average to what both *LeisureVille* and *The Waterfront Wynyard* are currently paying, namely, 9.9 ETs and 13.2 ETs respectively, we see that Mr & Mrs Gilmour are paying 66.56% more ETs for sewerage than *LeisureVille* and 24.92% more ETs than *The Waterfront Wynyard*.

Notwithstanding the fact the Property is of mixed use, not just a caravan park, I will now turn to AS01 of PSP3. It provides the option of charging 0.45 ETs per self contained cabin and 0.5 units per toilet/shower. If you apply this to the number of buildings/cabins on the Property you derive a figure of 8.3 ETs using the following calculation.

$$\begin{aligned}
 \text{Total ETs} &= 14 \text{ cabins } (14 \times 0.45) + 2 \text{ toilets } (2 \times 0.5) + 2 \text{ showers } (2 \times 0.5) \\
 &= 6.3 + 1 + 1 \\
 &= 8.3
 \end{aligned}$$

If you contrast a figure of 8.3 ETs for the Property in comparison to 9.9 ETs for *LeisureVille* and 13.2 for *The Waterfront Wynyard* using the information provided above, clearly a figure of 8.3 ETs is the most reasonable calculation of ETs you are able to achieve if strictly adhering to AS01 of PSP3. Of course your office is not required to stringently adhere to AS01 given the ability you hold to assess the number of ETs on a case by case basis where the circumstances warrant it.⁶

By appreciating that an ET is considered to be the sewage discharge into TasWater infrastructure from an average residential house under dry weather conditions, you must then accept that in circumstances where water is lost through a leak on the Property, the increased water use does not coincide with any extra load being placed on sewerage infrastructure.

Where leaks are acknowledged and accepted to have occurred, you are duty bound to consider alternative means of calculating ETs for the Property in order to keep customer charging in line with the objectives of PSP3. The circumstances outlined above, more than adequately evidence the need to assess the Property on an individual basis when it comes to ETs. The position therefore remains identical to what was put to your Ms Katie Hooper on 15 May, 2019. That is:

⁶ Ibid at p128

1. Mr & Mrs Gilmour are prepared to pay 8.0 ETs for the Property commencing from the beginning of 2012/13 and continuing to date.
2. Upon being provided with the data from your office regarding amounts Mr & Mrs Gilmour have paid for ETs from 2012/13 to date and deducting the amount that would have been required to be paid for that same period at a rate of 8.0 ETs will determine how much is either owing to TasWater from Mr & Mrs Gilmour or more likely, the refund that is due and owing to Mr & Mrs Gilmour.
3. In accordance with PSP3, TasWater is to periodically assess ET charges for the Property on an individual basis into the future until such time as a 12 month period absent of leaks is obtained for same, at which point the calculation for ETs will revert to the primary method of calculation for ETs provided for under AS01 of PSP3.

If your office is agreeable to the above resolution, which I note addresses both the historical and future aspects of the dispute; Mr & Mrs Gilmour will waive a claim for interest on any money due and owing to them in relation to same.

Whether or not you agree to the above, I demand you to attend to the following:

- (a) Commencing from the beginning from 2012/13 and continuing to date, recalculate each quarterly sewerage charge based on 8.0 ETs and advise of the amount of each associated quarterly charge in an easily understood manner;
- (b) Commencing from the beginning of 2012/13 and continuing to date, provide me with a summary of the quarterly payments made by Mr & Mrs Gilmour associated with the ET charges rendered for the Property in an easily understood manner;

In an abundance of caution, I remind you that you are required to provide the above to your customer in light of:

- (i) The TasWater Customer Charter July 2018 says so (see clause 9.1 therein); and
- (ii) All persons and Corporations are required at law to mitigate their losses and this is particularly true for TasWater being a Council owned monopolistic company which is required at all times to act as a model litigant.

Concluding Comments

In light of the detail provided in this correspondence combined with all correspondence to your office I have written over the course of this year, I do not believe there is anything further that needs to be put forward to support the lawful position of Mr & Mrs Gilmour in respect to all three heads of dispute outstanding. I am satisfied that your office is grossly mistaken as to the law in respect to the position you hold.

If your office chooses not to avail itself of the of the path to resolution outlined in this correspondence, then naturally the matter will proceed to the Ombudsman and/or the Magistrates Court or Supreme Court (dependant on quantum) in due course. The choice is a matter for your employer. I pause to note that a response to the questions raised in this correspondence, the questions raised in my correspondence to your Ms Sophie Rowlands dated 7 June, 2019 and the provision of the charging details sought with respect to meter charges and ET payments referred to above, are all sought before Mr & Mrs Gilmour can make a decision as to their next step. As you will appreciate, a full understanding as to the exact historical amounts in dispute need to be known by both parties before progressing further and that in turn will assist in determining the forum this dispute is next taken to. I await the provision of that information accordingly, but trust you will attend to that within fourteen (14) days of the date of this correspondence so not to inconvenience your customers any further.

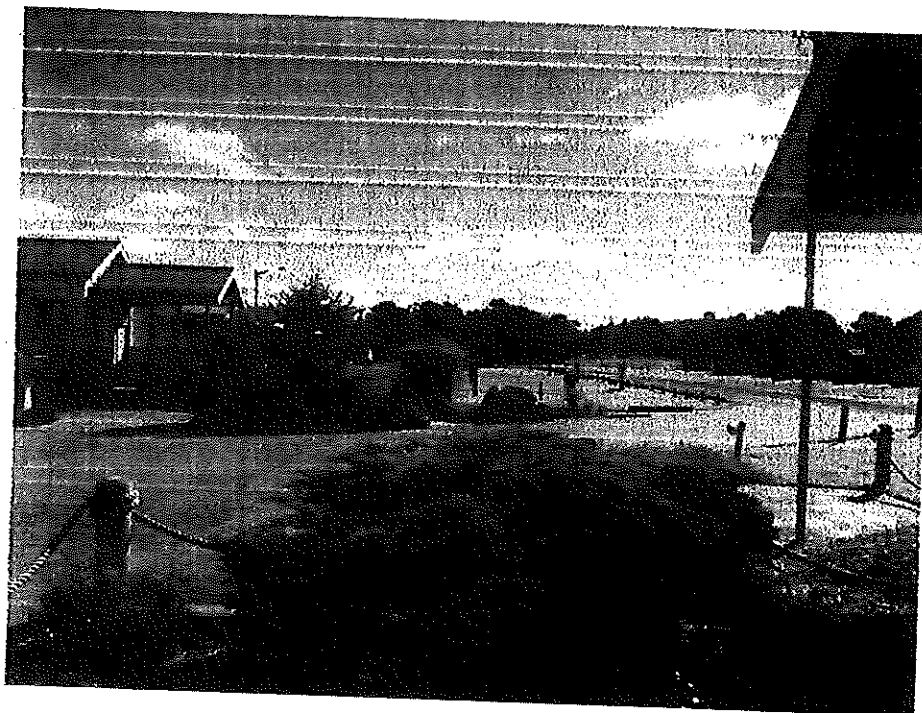
I take this opportunity to once again respectfully suggest that if you are serious about understanding the lawful implications of your decisions and your chances of success, you refer your file along with my chain of correspondence to your externally appointed legal team so they can provide you with appropriate guidance.

Kind Regards,

A handwritten signature in black ink, appearing to be 'Ryan Gilmour', with a long horizontal stroke extending to the right.

Ryan Gilmour

Ph: 0417 582 622



FIRE SERVICE REPORT

BEACH RETREAT TOURIST PARK

30b OLD BASS HIGHWAY, WYNYARD

Prepared by

Barry Magnus – Building Surveyor
CC4804P

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Overview of Report

Scope

We have been requested by Mr. Ryan Gilmour to inspect and provide a report on the National Construction Code 2019 (NCC) regarding the requirement of 100mm Fire Main, Fire Hydrants and Hose Reels for the Beach Retreat Tourist Park (the Park) located at 30b Old Eass Highway, Wynyard.

It is our understanding that the property was once under Council ownership, the road within the tourist park at that time, I believe, was consider as a public road, however, has been transferred to private ownership and the road is now considered a private road within the tourist park.

Methodology

To establish the requirements, refence will be made to the complete Suite of the NCC, which consists of NCC Volume One, NCC Volume 2, NCC Volume 3 and NCC Guide to Volume One, which is available on the Australian Building Codes Board (ABCB), <https://ncc.abcb.gov.au/ncc-online> . This will be carried out, along with a site inspection of the property to note the location of the service infrastructure on site and the classification and separation of buildings contained on the site. Reference will also be made to the TasWater overlay on Hydrants contained on the List, available from www.thelist.tas.gov.au a copy of the overlay is attached to the report.

Information sited;

- Waratah Wynyard Council - Ordinary Meeting of Council, Minutes 17th November 2003;
- Letter to Mr. Ryan Gilmour 5 July 2019, from Waratah Wynyard Council;
- TasWater hydrant overlay from the list;



Inspection

The inspection was carried out on the 9th August 2019, on site Barry Magnus (Braddon Building Surveying), Ryan Gilmour, Mr. and Mrs. Gilmour (owners of the property).

Initially a brief inspection was carried out outside the tourist park (by Barry Magnus) to confirm the location of Fire Plugs shown on the TasWater Overlay (refer photo 3.0) all where located, along with a further fire plug located just outside the entry to the tourist park (refer photo 1.0), it appears that this hydrant is subject to maintenance and testing we assume by TasWater, however is not shown on the TasWater overlay.

The buildings located on site would be Classified as Class 1a, 1b and 10a buildings, all buildings on site have the required separation for fire as required by the "NCC Volume 2 – Part 3 7.2 Fire separation of external walls" (refer photo 7.0).

The 100mm service enters the site near the amenities block (refer photo 9.0).



Summary

Current requirements of the NCC; with regards to fire service (main) supplying, fire hydrants and fire hose reels are referenced in Volume One which relates mainly to Class 2 to Class 9 buildings, with floor areas greater than 500 m².

Buildings on site are Class 1a, 1b and 10a, therefore the NCC does not require the installation of hydrants and fire hose reels. Other factors may lead to consideration of the installation, such as Provision for special hazards NCC, Volume 1 – E1.10;

Extract:

“E1.10 Provision for special hazards

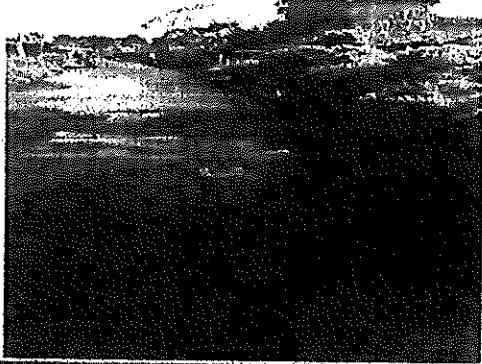


Suitable additional provision must be made if special problems of fighting fire could arise because of—
(a) the nature or quantity of materials stored, displayed or used in a building or on the allotment; or
(b) the location of the building in relation to a water supply for fire-fighting purposes.”

However, no materials that could be considered for this are located on site and existing water supplies outside the tourist park, provided by Taswater, provides adequate coverage of the buildings on site.


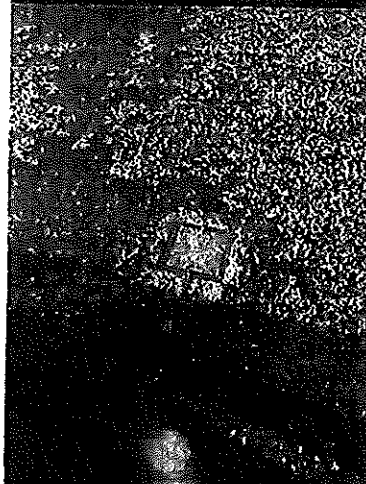
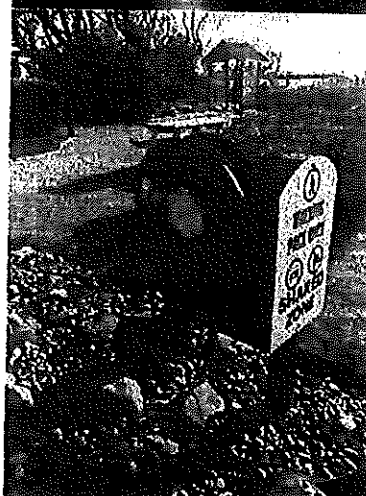
The 100mm main, fire plugs and fire hose reels, therefore, are not required under the NCC for the existing use and buildings contained on the site.



Appendix – PHOTOS:

NUMBER	PHOTO	NOTES
1.0		Tourist park entry, with fire plug outside property entry.
2.0		Tourist Park Entry
3.0		Position of street hydrants – Old Bass Highway

			
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NUMBER	PHOTO	NOTES
4.0		Non-maintained fire hose reel
5.0		Non-maintained park fire plug
6.0		Non-maintained fire hose reel



NUMBER

PHOTO

NOTES

7.0



Cabins - complying fire separation

8.0



Water meter

9.0



Main connection carried out by Council



TasWater Hydrant Plan



Taswater.pdf



Contact Information

Barry R. Magnus

16/08/2019

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Enquiries: Sally Blanc
Phone: (03) 6443 8311
Our Ref:

5 July 2019

Mr Ryan Gilmour

EMAIL: ryan_gilmour@hotmail.com

Dear Mr Gilmour,

RE: TASWATER DISPUTE – 30B OLD BASS HIGHWAY WYNYARD

In relation to your letter of 16 June 2019 we advise the following:

Waratah-Wynyard Council has been unable to locate any record of the owners of the Property, Mr & Mrs Gilmour, being either approached or agreeing formally or otherwise that they are prepared to accept ownership and future responsibility for the 100mm water main within the Property in accordance with the recommendation and subsequent resolution passed by the Waratah-Wynyard Council at its Meeting of Council held on 17 November 2003 and referred to in the minutes therein.

Please contact us on (03) 6443 8311 should you have any questions.

Yours sincerely,



Shane Crawford
GENERAL MANAGER

Sophie Rowlands
Customer Services Manager

7 June, 2019

By email only: Sophie.Rowlands@taswater.com.au

Dear Ms Rowlands,

30b Old Bass Highway, Wynyard – 100mm Meter Dispute/Complaint

I refer to my letter of 5 April, 2019 and your letter in response dated 17 May, 2019.

Whilst I am in the process of referring this matter to the Ombudsman together with a complete set of our correspondence, I deem it appropriate to address some of the inaccurate information or otherwise misguided statements you presented in your abovementioned correspondence and seek clarification on a number of matters you have referred to therein.

Whilst I may not persuade you as to your position, and to this end I appreciate you are an employee of the Corporation, it is nevertheless appropriate I raise these issues now, as it will firstly assist the Ombudsman, later your externally engaged legal Counsel (should Court proceedings be contemplated) and then ultimately a Court itself by way of tendering same in evidence and then finally on the question of costs.

I responded using your headings and have underlined those questions to which I require an answer as they directly relate to statements made in your abovementioned response.

The infrastructure currently in place at the Property

You make the following statements of relevance:

- (a) *"...as the Property is connected to TasWater infrastructure through a 100mm connection, TasWater is entitled to charge for that connection size";*
- (b) *On page 1 of your correspondence and continuing throughout, you repeat that TasWater is "...unable to comment on any agreement that may have existed between Council and Mr & Mrs Gilmour"; and*
- (c) *"...TasWater is unable to comment on this infrastructure, and its size and configuration does not impact TasWater's billing practices".*

A number of issues arise from the above. The first point to make is that decisions made prior to water and sewerage infrastructure passing to *Cradle Mountain Water* and now *TasWater* are your concern and you cannot absolve yourself from responsibility that derives from same. To this I direct your attention to Part 3 of the *Water and Sewerage Corporation Act 2012*. In particular, you ought to familiarise yourself with sections 28 and 30 therein, which provides for the vesting of assets, rights and liability from the Transferor to the Transferee. That is, all the assets, rights and liabilities have transferred from the *Waratah-Wynyard Council* through to *Cradle Mountain Water* and now vest in *TasWater*. Do you still assert that *TasWater* is somehow immune from decisions made by your forbearers, and if so, on what legal basis do you assert same?

You were provided with a copy of the minutes from the *Waratah-Wynyard Council* Meeting held on 17 November, 2003. You can see from those minutes that the decision to place a 100mm meter on the Property was done purely for financial reasons as a way of allowing council savings into the future, by converting the 100mm main to an internal service. I can only hypothesise as to how such savings for Council would be derived, but making such a meter Mr & Mrs Gilmour's problem and the Council absolving themselves from any future public liability and property claims if leaks were to occur are but a few of the more obvious thoughts.

Importantly, the motion was carried by Councillors French and Ransley that the Council was to:

"...request the owners of the property to formally agree that they are prepared to accept ownership and future responsibility for the 100mm water main within the property once the work is completed".

Such agreement was never given by Mr & Mrs Gilmour either expressly or impliedly. In fact, on the contrary, just prior to the abovementioned Council meeting, Mr & Mrs Gilmour were told by the Council that it would reroute the sewerage rising main and water main around the Property in June/July 2004. Mr & Mrs Gilmour confirmed they were happy with this course such that they would withdraw their development application until these works were completed by Council as this would remove all unnecessary encumbrances from their title. Obviously Council made their unilateral decision contrary to this purported agreement in full knowledge of Mr & Mrs Gilmour's position. Annexed hereto and marked "A" is a copy of said correspondence dated 12 November, 2003. If you suggest in the alternative that somehow Council legally placed the 100mm main on the property despite the above, noting that the assets, rights and liabilities have vested in *TasWater*, the onus is on you to provide evidence of same.

As you will have gleaned from the attached correspondence referred to above, the determinations from the Council came about as a result of Mr & Mrs Gilmour submitting a development application, whereby Council realised that they had historically allowed buildings to be erected over a sewer rising main in contravention of s39 of the *Sewers and Drains Act 1954*. As a result of those oversights and with precedent now established for the Property, the Council clearly understood that if there was a substantial break in the sewer rising main of the Property in the future, it could pose a significant risk to life and property for which they would be liable. It was therefore determined for the Council to budget for the relocation of the rising main in the 2004/05 budget.

The Council had the power to make such a determination as the *Local Authority* was (and remains) responsible for all sewage and sewage disposal. To this end I refer to you to sections 4 and 26 of the *Sewers and Drains Act 1954*. The *Sewers and Drains Act 1954* does not however cover water mains and associated infrastructure. The point being, the Council had no lawful right to place a 100mm meter on the Property and for all future responsibility for same to transfer to Mr & Mrs Gilmour unless they provided their express consent to allow same. Or in other words, to permit such action, there required a traditional contract to be entered into between the *Local Authority* (the Council) and Mr & Mrs Gilmour. This is no doubt why the determination of Council was to seek to obtain the formal consent of Mr & Mrs Gilmour, as without same, they had no lawful right to place such infrastructure on the Property.

The above distinction between the two determinations made back on 17 November, 2003 is important as it affects how your *Customer Contract* operates. Pursuant to the *Customer Contract* under the *Price and Service Plan 2018-21* and s60(2) of the *Water and Sewerage Industry Act 2008*, a customer of a regulated entity is taken to have entered into a *Customer Contract* with the regulated

entity (*TasWater*), for the provision of water services and sewerage services, or either of those services as provided for under the *Customer Contract*. Nobody is disputing a contract exists between the Corporation and Mr & Mrs Gilmour. That is, there is clearly a contract between the Corporation and Mr & Mrs Gilmour to deliver water and sewerage services. The dispute relates to whether or not you are lawfully allowed to charge Mr & Mrs Gilmour for a 100mm meter which was unlawfully placed on the Property (whether placed there by *TasWater* or its forebears) and which is not wanted nor required by law. You will not find an answer to this under either the *Customer Contract* or *Price and Service Plan 3* ('PSP3'). The answer will derive from basic contract law principles.

As I see it, the matter falls into one of two categories. Either:

- (a) The *Customer Contract* has simply never included the 100mm meter as a result of the illegality involved in its placement on the Property at first instance; or
- (b) That the *Customer Contract* insofar as it relates to the 100mm meter is void *ab initio* as a result of there never being an agreement between Mr & Mrs Gilmour and the Council (now *TasWater*). For if this were not the case, then *TasWater* would have carte blanche to install 100mm meters on every residential property in the state, simply to increase the fixed costs payable by those home owners or occupants. Whilst I would not put such thinking past your office, clearly the *Customer Contract* does not protect you from this sort of behaviour.

Irrespective of which of the above scenarios holds true, *TasWater* has no fallback by seeking payment on a quantum meruit basis as:

- (i) You have not provided a service of any value to Mr & Mrs Gilmour as the water that is fed to infrastructure on the Property is from the 32mm (or equivalent) meter (as explained in detail in my aforementioned correspondence); and
- (ii) The dedicated 100mm connection is a piece of public infrastructure that is neither required by law nor requested or accepted by Mr & Mrs Gilmour.

To summarise, reliance on your 'billing practices', vague references to the *Customer Contract* and attempts to absolve yourself from responsibility of actions from *TasWater's* forbears is of no concern. Due to the history of this matter, consideration must be given to contract law principles that govern such disputes and it is clear to me that this has not been done by your office as of yet.

Functionality of the Water Connections

You refer under this heading to the 100mm meter being classified by *Cradle Mountain Water* in 2012 as being a 'dedicated fire service' and refer to letters sent to Mr & Mrs Gilmour, including correspondence dated 5 December, 2012 stating:

"It is important to note that there should be no water usage registered through the 100mm meter given that it is a dedicated fire service. If water is registered and has not been used for fire fighting purposes the dedicated fire service rate will be cancelled and full charges will apply".

I explained in detail why this could not be adhered to in detail on page 4 of my letter of 5 April, 2019 under the heading "Letter from Julie Poole dated 5 December, 2012". I will not repeat myself here other than to remind you that Ms Poole:

- (a) Failed to listen to Mr & Mrs Gilmour as to how water enters the Property through the 100mm meter which is then downsized to 32mm (or equivalent) before servicing the Property's infrastructure;
- (b) Chose not to inform herself of how the water infrastructure was set up on the Property; and/or
- (c) Thought it appropriate to offer a resolution to Mr & Mrs Gilmour that was impossible to adhere to such that if she was aware of how the 100mm meter and 32mm meter were structured (as she ought to have been), engaged in misleading and deceptive conduct through couching her correspondence as some form of permanent solution.

The reality is that everything that is registered on the 32mm meter matches that of the 100mm meter, thus indicating that that no water has been used for the purposes of what Ms Poole describes as the 'dedicated fire service'. Furthermore, the fire hoses that are present on the Property that access the 100mm connection have been non operational for some ten years and have been condemned by TasFire. All this information was made available to Ms Poole prior to her writing the above correspondence. I will address TasFire issues in greater detail later in this correspondence.

Finally, you state:

"Although TasWater have previously offered to install a bypass meter at the Property and bear the cost of this installation (emphasis added), to date Mr & Mrs Gilmour have not chosen to pursue this option".

Whilst I do not need to address the issue of a bypass meter as a result of the legal reasoning outlined above, I would be pleased to see evidence from you as to when this offer was made. Can you please provide me with a copy of this correspondence as I am currently missing this from the file provided by Mr & Mrs Gilmour.

The Need For A 100mm Water Connection & TasFire Requirements

You state that Mr Stefan Deverell of *Benchmark Building Surveyors* was contacted by your office and he confirmed that the 100mm connection is needed to satisfy TasFire's requirements for the Property. You go on to refer me to the *Fire Services Act 1979* and the *General Fire Regulations 2010*. Most interesting to me is the fact you do not state any particular section from those pieces of legislation in which reliance has been placed and how that particular section applies to the Property. I would not provide such throw away lines in providing advice to clients or addressing a court and likewise I would expect at the very least your legal department to have given these pieces of legislation some consideration. As is unfortunately becoming the norm, I will endeavour to assist your understanding.

The *General Fire Regulations 2010* are not applicable to the Property. You and your legal department may wish to consider regulations 4 and 5 therein. Suffice to say, the structures on the Property are neither a "prescribed building" nor a "specified building".

You are aware from Annexure 'C' of my correspondence dated 5 April, 2019 that Mr Robert Whiteway of TasFire has confirmed that there is no requirement for the Property to have a 100mm connection for fire fighting purposes under the *National Construction Code* ("the NCC"). At risk of spelling out the obvious, the NCC provides the minimum necessary requirements for safety and

health; amenity and accessibility, and sustainability in the design, construction, performance and liveability of new buildings (and new building work in existing buildings) throughout Australia. It is a uniform set of technical provisions for building work and plumbing and drainage installations throughout Australia whilst allowing for variations in climate and geological or geographic conditions. The NCC is comprised of the *Building Code of Australia* volumes 1 and 2 along with the *Plumbing Code of Australia* volume 3. The *Building Code of Australia* is what is referred to in regulation 4 of the *General Fire Regulations 2010* insofar as classifying a building as a 'prescribed building'. You therefore have evidence in your possession from *TasFire* themselves that the *General Fire Regulations 2010* do not apply to buildings on the Property. In light of the fact you have raised this piece of legislation as having some relevance to this matter, please advise me of the section(s) that are applicable and how they apply to this matter?

When it comes to the *Fire Service Act 1979*, it is largely an administrative piece of legislation and has no direct relevance to our discussion in this instance. Once again, given you have raised this as a piece of legislation of consequence to this discussion, please advise me of the section(s) that are applicable to this dispute and how they specifically apply in this instance?

You refer in your correspondence to a discussion you purport to have had with Mr Deverall who as you are aware, engaged *TasFire* to assist him in the task of better understanding *TasFire's* Requirements. Mr Robert Whiteway confirmed that there was no legal requirement for the Property to be serviced by a 100mm connection by way of a dedicated fire service and hypothesised as to why it might be there. By way of a summary, he believes it is a valuable piece of infrastructure and therefore would like it to remain. None of these points I take issue with. Of course, on its face, a connection that would enable *TasFire* to fight a fire has value and if it is already there, why remove it? That however is not the point of this dispute. The point is that you are trying to charge for a piece of infrastructure (albeit illegally placed on the Property) for which there is no legal requirement for it exist and for which Mr and Mr Gilmour do not want you to provide a service to. Suffice to say, this goes to the heart of the *Customer Contract*, if indeed it even exists insofar as the 100mm connection is concerned.

To provide a graphic illustration as to why the 100mm connection and associated fire fighting infrastructure is not legally required, I present you the following photographs of the condemned fire fighting equipment that tap into the 100mm connection on the Property.



Image 1: Fire hose reel condemned by TasFire with all their own stickers placed on reel

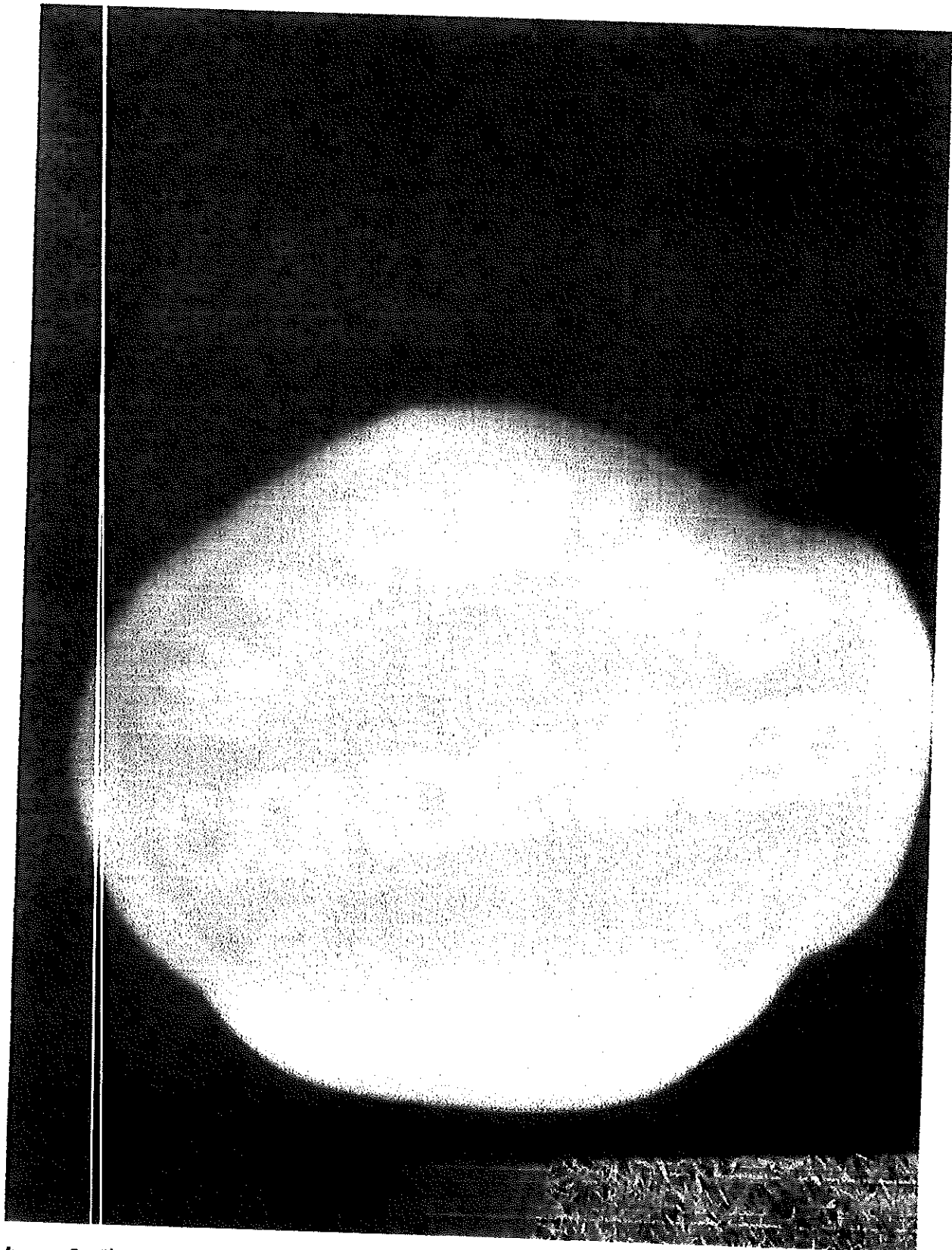


Image 2: Close up of TasFire "condemned" sticker placed on the fire hose reel.

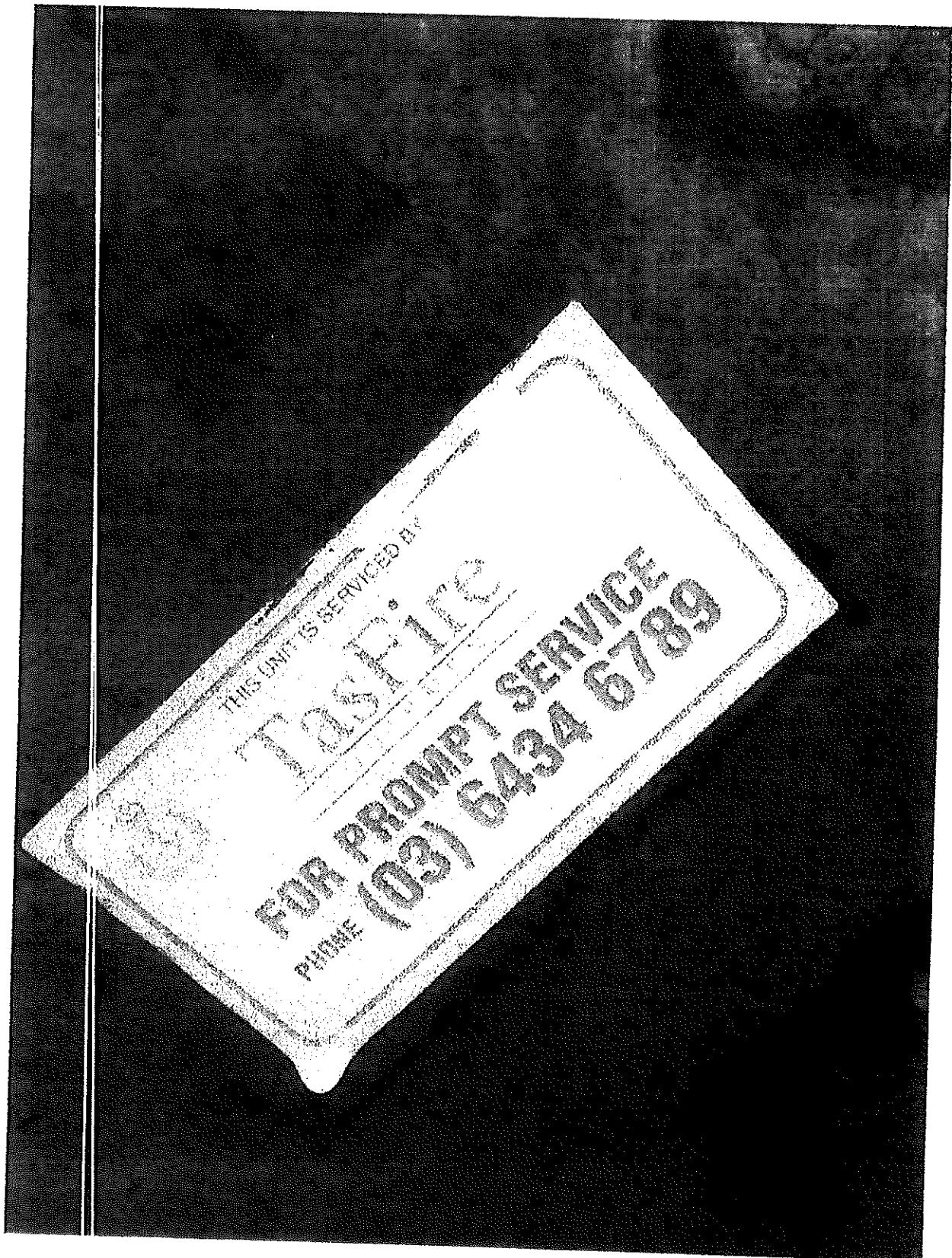


Image 3: close up of TasFire's sticker on the fire hose reel.

The fire hydrants on the Property were non operational and condemned approximately 10 years ago. Employees of your office were shown this infrastructure during previous visits to the Property yet it appears that this may have gone undocumented on your file. The importance of this is that the 100mm pipeline which you suggest ought be a 'dedicated fire service' and cannot be removed, is

in actual fact, not able to be tapped into through the current infrastructure on the Property should a fire occur. If the NCC or any piece of Tasmanian Legislation requires such infrastructure, do you think *TasFire* would condemn such pieces of equipment and then not require it to be replaced or otherwise made operational by Mr and Mrs Gilmour? Furthermore, if you genuinely believe the *General Fire Regulations 2010* have some application to the Property insofar as this 100mm connection is concerned, you may wish to ask yourselves why the various penalty provisions therein have not been acted upon.

In summary, the only requirements for fire fighting equipment are those provided for under the NCC. They include smoke detectors and fire extinguishers in each short term accommodation units. Mr & Mrs Gilmour comply with this requirement.

I trust I have made the legal points insofar as the 100mm connection is concerned, crystal clear. I respectfully suggest that you place this correspondence on the top of your file for ease of future reference for other *TasWater* employees to peruse or your externally engaged legal Counsel.

Charges Going Forward

If *TasWater* wish to install a bypass meter at their cost, then by all means attend to same. However this will not resolve this dispute. The options for a resolution that accord with law are as follows:

1. *TasWater* at its own expense remove the illegal infrastructure, namely the 100mm meter and block the 100mm pipeline under the Property that services the disused fire fighting infrastructure; OR
2. *TasWater* at its own expense remove the illegal infrastructure, namely the 100mm meter and if you wish for *TasFire* to have access to the 100mm pipeline for fire fighting services into the future, then Mr & Mrs Gilmour take no issue with it remaining in situ. Of course the responsibility and cost of maintaining this pipeline and paying for this infrastructure insofar as fixed costs and any variable water usage costs are concerned will be a matter for your office and *TasFire*. Mr & Mrs Gilmour will not be out of pocket in relation to this connection.

With either of the above options, Mr & Mrs Gilmour will not be paying any historical charges associated with this 100mm connection. If the Ombudsman is unable to convince your office of your legal position then any attempt by your office to recover charges for same will be defended before a Court of competent jurisdiction.

I look forward to receiving your response generally, but particularly in relation to those questions I have raised throughout this correspondence that require your attention, which I underlined for ease of reference.

Kind Regards,



Ryan Gilmour

Ph: 0417 582 622



TW HPE ref: 19/127237

13 December 2019

Mr Ryan Gilmour
C/- Beach Retreat Tourist Park
30B Old Bass Highway
Wynyard TAS 7325

Sent via email: ryan_gilmour@hotmail.com

WITHOUT PREJUDICE SAVE AS TO COSTS

Dear Mr Gilmour

30B Old Bass Highway, Wynyard: Disputed Matters

I refer to your letter of 13 September 2019 and our subsequent telephone conversation regarding the disputed charges at 30B Old Bass Highway, Wynyard (**the Property**). I apologise for the time it has taken to respond to your latest letter. As advised in my email to you of 15 November, this has in large part been due to unavoidable resourcing constraints at TasWater.

As discussed in our telephone conversation of 13 September, TasWater's primary objective is to reach settlement with Mr and Mrs Gilmour (**the Gilmours**) without the need for formal litigation. However, when considering the time and resources invested (by both sides) in this dispute to date, and the failure to reach a mutually acceptable outcome, I do not consider there to be merit in continuing to engage in lengthy written correspondence which has done little to resolve the substantive issues disputed.

I therefore wish to advise you that this letter should be taken as representing TasWater's full and final position on:

1. The substantive matters in dispute
2. The outstanding charges on the account (**Revised Offer**)
3. The charges to be applied to the Gilmours' account going forward and
4. Options for third party dispute resolution.

Each of these matters is discussed in full below. However, before addressing these matters, I would like to address several other issues raised in your previous communication with us, in particular your letters of 5 April, 7 June and 13 September 2019.

'Without Prejudice Save as to Costs' Claim over our Letter of 30 July 2019

Your comments at point 1 of your 13 September letter are noted and substantially agreed. As you note, the details of the settlement offer under the headings 'Settlement Offer' and 'Further Conditions of Settlement' are and remain without prejudice save as to costs. The other contents of the letter were not intended to and do not need to be without prejudice. We would not attempt to prevent any of that content being adduced in court, should this matter end up in court.



It is common to compose a letter in this manner in the course of dispute resolution and it is entirely reasonable that TasWater sent the letter of offer on a without prejudice basis, given it was in connection with an attempt to negotiate a settlement of the dispute. We note that you did the same in your letter of 13 September 2019.

Privilege over Building Surveyor's Report

At point 2 of your letter you claim 'privilege' over the report from Shane Deverell of Benchmark Building Surveyors Pty Ltd dated 12 June 2019 (**Benchmark Report**). On the information provided, we do not see how privilege can be claimed over that document and find your reasoning and assertions flawed in several aspects:

- It is our understanding that privilege can only be claimed over certain categories of documents or information. We cannot see how the Benchmark Report falls into any of those categories.
- You have contended that the Waratah Wynyard Council (**Council**) engaged Mr Deverell to provide that report on behalf of the Gilmours as their 'agent' but have not provided any evidence of this. In fact, your letter of 5 April 2019 confirms that Council engaged Benchmark Building Surveyors Pty Ltd to undertake the assessment of the water needs of the Property.
- In any case, to be privileged, the Benchmark Report would need to have been obtained by the Council as the Gilmours' agent for the dominant purpose of obtaining legal advice, which would seem unusual in circumstances where the Council is, as you have noted on many occasions, the 'forebear' of the other party in the dispute to which the legal advice would have related. Further, the Benchmark Report specifically excludes from its scope the dispute between the Property owners and TasWater regarding the 100mm pipe and any other dispute, and states that its sole purpose is to outline whether the 100mm pipe is necessary for the operation of the tourist park.
- In your letter of 5 April 2019, you encouraged us to contact Mr Deverell to discuss the matter and confirm your summary of his verbal advice. We acted in accordance with these instructions.

Accordingly, I do not consider it necessary to comply with the requests set out in point 2 of your 13 September letter. In any case, we have since received confirmation of the position outlined in the Benchmark Report from Tasmania Fire Service (**TasFire**) (discussed below) and accordingly do not need to rely on the advice contained in the Benchmark Report.

Suggestions of Potential Misconduct or Incompetence on TasWater's Part

TasWater is aware that the current dispute has been longstanding and forms part of a broader history of complaints by the Gilmours relating to the provision of water and sewerage services at the Property.

Since its incorporation, TasWater has attempted to respond to the Gilmours' wide-ranging concerns in a timely and responsive manner. While we acknowledge that, at times, TasWater's response to the Gilmours' complaints has been delayed or in some way unsatisfactory to the Gilmours, we are concerned by your suggestions that:

- A TasWater employee potentially engaged in misleading and deceptive conduct (7 June letter)
- There has been a complete failure on TasWater's part in resolving this dispute (13 September letter)



- In relation to TasWater's without prejudice communication of 30 July from the Legal Services Department Manager, there are potentially issues of abuse of power (13 September letter)
- TasWater has little regard for its customers and is willing to engage in conduct that is potentially immoral or done purely for commercial gain (7 June and 13 September letters)
- TasWater's previous investigations into the charges levied at the Property have 'meant: nothing more than relying on incorrect information and assumptions' (5 April letter) and
- TasWater has little to no understanding of its governing legislation or basic common law contractual principles (7 June and 13 September letters).

TasWater does not accept these statements, nor does it consider them warranted. We politely remind you of the importance of avoiding unfounded allegations in the course of dispute resolution.

Referral to External Counsel

TasWater is also concerned by your repeated suggestion (in your 5 April letter and in conversation of 13 September) that we engage Rae and Partners, and in particular Evan Hughes, as external counsel on this matter, given your previous employment at the firm. As you disclosed, while employed at Rae and Partners you acted on behalf of TasWater in several minor litigation claims. As you would be aware, TasWater primarily engages Rae and Partners for minor debt collection activities. For a range of reasons, which include your previous employment at the firm, if we were to consider referring this matter to external counsel we would not consider it appropriate to engage Rae and Partners.

Demands for Account Information

Your 13 September letter contained several demands for information regarding historical amounts charged on the Gilmours' account as well as amounts that would have been charged had TasWater levied charges according to your proposed basis (e.g. a 32mm fixed water connection and 8.0 equivalent tenements for sewerage services).

TasWater's position is as follows:

- TasWater has an obligation to provide – at a customer's request – information held by the regulated entity about the history of the regulated service provided to that customer, or payments made by that customer. This obligation arises from the *Water and Sewerage Industry (Customer Service Standards) Regulations 2019* (Tas) (as opposed to the Customer Charter to which you referred us).
- There is no obligation on TasWater to undertake calculations based on a customer's claims of what they allege should have been charged during a relevant period. All our relevant charges are set out in our publicly available documents. If we have overcharged a customer, we adjust any overpayments in accordance with the process set out in our *Water and Sewerage Industry (Customer Service Standards) Regulations 2019* (Tas).

We remind you that we do not accept your proposed basis for charges at the Property, or that TasWater has overcharged the Gilmours for services to the Property. Accordingly, I have attached a summary of all the charges paid by the Gilmours on the account from 2009 to date (**Attachment 1**) which includes all the credits applied to the account, as well as a break down of payments by service.

Referral to Ombudsman

We note that at several points in previous communication with us, you have stated that you have been 'in the process' of referring the matter to the Ombudsman. As you are aware, TasWater policy is (generally) to hold off any collections activity when a complaint is lodged with the Ombudsman.

Despite your suggestions that you were referring the matter early as 2 June, our understanding is that you have not yet done so.

Given your outright rejection of TasWater's position and offers to date and our inability to come to a mutually satisfactory position, TasWater no longer expects that resolution without third party involvement is likely and as noted above, does not consider there is merit in continuing to engage in lengthy written correspondence which appears to have done little to bring the parties closer to resolution.

Accordingly, and as more fully explained at the conclusion of this letter, if you do in fact wish to refer the matter for third party dispute resolution, you have ten business days within which to confirm your intention to do so. If, within this timeframe, you have not:

- Accepted the offer contained in this letter or provided us with additional information as requested below which would allow us to adjust the quantum or terms of our offer
- Referred the matter to the Ombudsman or
- Confirmed your intention to file the matter in a court of competent jurisdiction

TasWater will consider the matter resolved (having fully complied with its obligations under its Customer Complaints and Enquiries Policy, and which we remind you only applies where resolution is explicitly or implicitly expected) and will commence debt collection activities on this account.

I will now turn to a detailed discussion of TasWater's full and final position in relation to the substantive matter in dispute.

1. TasWater's Full and Final Position in relation to the Substantive Matters in Dispute

Given that TasWater's primary objective is to reach settlement without the need for litigation, I have set out below TasWater's full and final position on (what I believe to be) the substantive matters in dispute, resolution of which would inevitably settle the various other matters of contention you have raised throughout your correspondence with us this year. Those matters are:

- a) The legality of installation of the 100mm water meter at the Property
- b) Current and historical ownership (and responsibility for maintenance and upkeep) of the 100mm water pipe on the Property
- c) Current and historical ownership (and responsibility for maintenance and upkeep) of the fire infrastructure located under the Property
- d) Requirement for fire infrastructure on the Property
- e) Current and historical configuration of the 100mm water connection at the Property
- f) Current and historical calculation of ETs at the Property
- g) Leaking internal plumbing and calculation of variable water charges.

Each of these matters is addressed in turn below.

a) The Legality of Installation of the 100mm Water Meter at the Property

TasWater's position in relation to the installation of the 100mm water meter is set out in our letter of 30 July and remains unchanged.

For the avoidance of doubt, the size of meter that TasWater (and previously Council) installs at a property is dictated by the connection size to our infrastructure (and in any event is irrelevant to our fixed charges which are based on a connection size). Contrary to the allegations in your 13

September letter, TasWater does not attempt to arbitrarily increase connection sizes at properties with the aim of increasing revenue from customers. The size of a connection to our infrastructure is dictated by the size of the internal plumbing at a property which is informed by the water needs of a property (domestic and fire) and is not a matter over which TasWater has jurisdiction. TasWater therefore has no ability, nor does it attempt, to increase the connection size without customer request (which also receives independent assessment/confirmation by a qualified designer through the certificate of certifiable work process). We politely remind you that a 100mm connection was in place at the Property when the Gilmours purchased it.

We note that your latest letter also infers that TasWater was remiss not to raise the operation of the *Waterworks Clauses Act 1952* (Tas) (**WCA**) prior to our letter of 30 July. We politely remind you that our 30 July letter was:

- The first letter from the Legal Services Team (and hence the first opportunity to set out TasWater's legal position regarding the installation of the 100mm meter) and
- In response to our telephone conversation of 19 June, in which you requested that I provide you with any legal basis which would refute your argument that the meter installation at the Property was 'unlawful' under the *Sewers and Drains Act 1954* (Tas) and in fact required contractual agreement.

Accordingly, my letter of 30 July pointed you to the relevant (historic) legislation (being the WCA), which provided Council with the power to unilaterally install water meters without the need for a 'traditional' contractual agreement (which has been the basis of your argument to date). For the avoidance of any doubt, the WCA was only raised in response to the historic nature of the Gilmours' complaint. As you are no doubt aware, the majority of TasWater's operations are guided by the *Water and Sewerage Industry Act 2008* (Tas).

For the sake of completeness, I also wish to note that TasWater rejects your interpretation of the WCA set out in your 13 September letter. In particular:

- i. We disagree that the intent of the legislation is set out in s 18 of the WCA (or the Second Reading Speech of the *Water Legislation Amendment Bill 2013*).
- ii. The supply of water for domestic purposes (e.g. s 18) is just one part of the WCA. The WCA covers, among other things, construction of waterworks, supply of water for public purposes, and recreational use of public water supply.
- iii. There is no suggestion in the legislation that Council's power to install a meter 'in the pipe supplying water to any person' (s 40) was intended to only apply to pipes supplying water for domestic use (the definition of 'domestic' supply can be gleaned from s 20(1) of the WCA).
- iv. We disagree with your interpretation of s 25(2) of the WCA. Section 25 is about the supply of non-domestic water to a property and how charges for such a supply are determined. Under s 25(1), Council clearly had the power to charge the Gilmours a non-prescribed rate for the 100mm connection. The negotiation of an individual rate for the 100mm connection between Council and the Gilmours does not evidence or demonstrate that the meter was 'unlawfully' installed.
- v. The rate historically negotiated between Council and the Gilmours for the 100mm connection under the WCA in no way compels TasWater to charge at the same reduced rate. In fact, to do so would be contrary to our pricing methodology which aims for equality



in pricing across the State and which (for water) is based on the connection size that exists at a property.

b) Current and Historical Ownership (and Responsibility for Maintenance and Upkeep) of the 100mm Water Pipe on the Property

TasWater's position regarding the current and historical ownership of the 100mm water pipe running under the Property and servicing the fire hydrants on the Property is set out in our letter of 30 July. In particular, we reiterate:

- i. TasWater accepts there is no documentary evidence of a formal transfer of ownership of the 100mm pipe from Council to the Gilmours as proposed in the Council minutes of 17 November 2003. The letter from Shane Crawford (General Manager, Waratah Wynyard Council) of 5 July 2019 confirming that Council does not have any records formally documenting this transfer does not alter TasWater's position.
- ii. Although there is no documentary evidence of a formal transfer of ownership, this transfer was evidenced on Council's part by: (a) the isolation of the pipe at the western end of the Property prior to the formation of Cradle Mountain Water and TasWater; and (b) the installation of a meter on the 100mm pipe in or around 2004. Since the isolation of the pipe, it has functioned purely as a private pipe servicing the Property.
- iii. Importantly, TasWater does not have any evidence that development at the Property (since the formation of Cradle Mountain Water) has been subject to any conditions or restrictions that would be consistent with our ownership of the 100mm pipe. In fact, the development applications we have on record are consistent with private ownership of the pipe (they would not have been approved by TasWater or Cradle Mountain Water if the 100mm pipe was considered our property).
- iv. The development applications we have on record indicate that structures have been built over the water pipeline easement registered on the Property title. Further, plans recently submitted suggest that, as part of future development works, the Gilmours intend to expunge the water pipeline easement. Both of these points are inconsistent with your assertion that the pipeline is a piece of public infrastructure.

Accordingly, in TasWater's opinion there is sufficient evidence to establish that the 100mm pipe has, at least since it was isolated by Council, operated purely to service the private fire hydrants on the Property. Regardless, TasWater remains of the opinion that confirming ownership of the 100mm pipe does not impact the charges incurred on the account to date, as TasWater charges for water infrastructure based on connection size. Put another way, determining ownership of the 100mm pipe does not resolve the issue of whether the fire hydrants (which require a 100mm connection to remain operational) are required at the Property, nor does it determine ownership of the fire hydrants. To the extent that operational fire hydrants are required on the Property, a 100mm connection is required to service them and TasWater is entitled to charge for this connection. Ownership of the pipe between the fire hydrants and the connection is irrelevant to TasWater's charging practices.

TasWater acknowledges, however, that determining the ownership of the 100mm pipe is desirable to minimise any future dispute over maintenance obligations and development at the site. Accordingly, in the interests of minimising future disputes and working toward resolution in the current dispute, TasWater is willing to accept ownership of the 100mm pipe going forward. The conditions and requirements of this ownership are set out in detail at the end of this letter.

c) Current and Historical Ownership (and Responsibility for Maintenance and Upkeep) of the Fire Infrastructure on the Property

Our position regarding the current and historical ownership of the fire hydrants and fire hose reels (fire infrastructure) attached to the Property is set out in our 17 May and 30 July letters. For the avoidance of any doubt, our position is as follows:

- i. The fire hydrant plugs and fire hose reels at the Property formed part of the Property when Mr and Mrs Gilmour purchased the land. Presumably, the Gilmours investigated the need and responsibility for these fire hose reels and hydrants as part of their due diligence prior to purchase of the Property.
- ii. In the absence of any explicit exclusion in the contract of sale for the Property, the fire infrastructure must be considered fixtures and can therefore be assumed to have transferred to the Gilmours upon purchase of the Property.
- iii. As private infrastructure, TasWater is not under maintenance obligations that may apply to public fire infrastructure and is unable to comment on its operational status (condemned or otherwise). Maintenance of the fire infrastructure is the Gilmours' responsibility.
- iv. The fire hydrants, not the fire hose reels, require a 100mm water supply for their operation. Your previous assertion that the fire hose reels are condemned and not operational has no bearing on the ongoing need for a 100mm connection to service the fire hydrants.

If, contrary to TasWater's position that the fire hydrants are private property, the Gilmours are able to produce evidence that they were excluded from the contract of sale for the Property, TasWater will reconsider its position. This would include assuming ownership and responsibility for maintenance of the fire hydrants going forward.

d) Requirement for Fire Infrastructure on the Property

TasWater's position in relation to the requirement for fire infrastructure on the Property remains unchanged from that explained to Mr and Mrs Gilmour since at least 2012. For the avoidance of any doubt:

- i. TasWater does not dispute, and has never disputed, that the 100mm connection is superfluous for the domestic water needs of the Property (which we understand can be met by a 32mm connection as currently configured).
- ii. TasWater accepts that a 100mm connection is only necessary to service the two fire hydrants on the Property that belong to the Gilmours (as set out at paragraph (c) above). TasWater (and previously Cradle Mountain Water) have repeatedly encouraged the Gilmours to downsize the 100mm connection or pursue the installation of a bypass connection which would enable the 100mm connection to function as a dedicated fire service (more fully explained at paragraph (e) below).
- iii. It has been explained on multiple occasions that downsizing or removing the 100mm connection (which would render the fire hydrants non-operational) requires a report from a registered building surveyor with input from TasFire.
- iv. The issue of whether the fire hydrants are required under the National Construction Code (NCC), and the question of whether they can be legally removed from the Property or rendered non-operational, are two separate issues:
 - a. TasWater does not assert, nor has it ever asserted, that the fire hydrants at the Property are necessary under the current requirements of the NCC. (TasWater's letter from Ms Sophie Rowlands of 17 May referring to the *General Fire Regulations 2010* (Tas) was an



error and should have been a reference to the *Fire Service (Miscellaneous) Regulations 2017 (Tas)*. We apologise for any confusion.)

- b. TasWater's position remains that the NCC is not the only consideration when determining whether fire hydrants are required to remain on the Property or whether they can be legally removed or rendered non-operational. There are, in fact, a range of considerations that must be taken into account when determining whether fire hydrants are required at a property.
- c. In relation to fire service requirements, we direct you to TasFire's (and in particular, the Chief Officer's) ability to make broad-ranging recommendations under the *Fire Services Act 1979 (Tas)* and the *Fire Service (Miscellaneous) Regulations 2017 (Tas)*. This power operates independently of any requirements under the NCC.

While the report undertaken by Braddon Building Surveying (**Braddon Report**) addresses NCC requirements for buildings, it does not address the critical question of whether and how the fire hydrants can be legally removed from the Property or rendered non-operational.

As the Braddon Report failed to address this critical issue, TasWater requested an opinion from TasFire. The Chief Officer does not support removal of the fire hydrants at the Property. This opinion was provided on 10 October and is attached to this letter (**Attachment 2**). For the avoidance of any doubt, this letter confirms TasFire's previous advice that the Chief Officer does not support removal of the fire hydrants at the Property.

Given this direction from the Chief Officer, TasWater's position is as follows:

- If no evidence is produced to contradict TasWater's position that the fire hydrants are a private fire service in accordance with paragraph (c) above, the fire hydrants will remain the Gilmours' property. If the Gilmours wish to remove the fire hydrants from the Property, or render them non-operational, they will need to investigate how they are legally able to do so. If the necessary authorisation for removal of the fire hydrants is obtained and provided to TasWater, we will decommission the 100mm connection at the Property and cease charging for this connection going forward.
- If, in the alternative and as set out at paragraph (c) above, evidence is produced that the fire hydrants were excluded from the sale of land to the Gilmours and subsequently are considered public fire hydrants, TasWater will accept ownership of these fire hydrants going forward. Given the Chief Officer's instructions that he would not support removal of the fire hydrants, TasWater would be unable to remove them from the Property (s 56ZE(3) of the *Water and Sewerage Industry Act 2008 (Tas)*). However, going forward, TasWater would be responsible for maintaining the fire hydrants and would cease (from the date at which evidence were provided in accordance with paragraph (c) above) charging the Gilmours for a 100mm connection to service these hydrants.

We stress that any decision regarding the removal or retention of fire hydrants at the Property does not in any way impact the charges incurred to date. As we have stated on many occasions, the Gilmours have been fully informed of the charges associated with the 100mm connection since the formation of Cradle Mountain Water (both for a dedicated fire service and a joint fire/domestic service) and have also been encouraged to seek a downsizing of the 100mm connection since this time. They have continually neglected to do so.



e) Current and Historical Configuration of the 100mm Connection at the Property

As explained at paragraph (d) above, TasWater acknowledges that the 100mm connection is, strictly speaking, only necessary to service the two fire hydrants at the Property. As fully set out in our letter of 17 May:

- i. The 100mm connection at the Property functions as a joint domestic and fire connection, meaning that all water usage (including domestic water usage) for the property flows through the 100mm connection before being diverted to the 32mm internal plumbing.
- ii. This configuration was discovered by TasWater when undertaking an audit of the Property in 2015. Prior to this, the Gilmours were being charged for a 20mm connection and a 100mm dedicated fire service, which was incorrect based on both the configuration of the infrastructure at the Property and the size of the domestic water connection.
- iii. Upon discovering that the water meter for the 100mm connection registered domestic water usage for the Property, TasWater commenced charging for a joint domestic and fire connection in accordance with our pricing methodology approved by the Tasmanian Economic Regulator. Under this methodology, the 100mm connection cannot be classified as a dedicated fire service (and charged at only 25% of the fixed charge rate) as it registers non-fire related water usage.
- iv. In order for the 100mm connection to be classified as a dedicated fire service, the infrastructure would have to be adjusted so that water for domestic use does not register on the 100mm meter. This could be achieved by installing a 'bypass' connection on the 100mm connection. The Gilmours would then be charged a dedicated fire service rate for the 100mm connection and a full fixed charge for the 32mm connection. This arrangement would also have the benefit of ensuring the Gilmours are not charged for supply of water in the event of a fire. As previously offered, TasWater is willing to install a bypass connection at the Property at its own cost to enable this charging structure at the Property.

While TasWater maintains its position that pursuing the installation of a bypass meter is a matter for the Gilmours to pursue (which they have failed to do to date), TasWater acknowledges that the configuration of the infrastructure does not fully reflect the functional purpose of the 100mm connection (being the service of fire hydrants attached to the Property).

Accordingly, and as fully explained at point (2) below, TasWater is willing to further reduce the outstanding charges owing at the Property to reflect what would have been incurred, had the Gilmours only been charged for a 32mm connection and a 100mm dedicated fire service since 2009 (the formation of Cradle Mountain Water).

f) Calculation of ETs at the Property

I refer to our correspondence of 14 December 2018, 20 May 2019 and 30 July 2019 and reiterate that TasWater's position in relation to equivalent tenements (ETs) for sewerage services remains unchanged. However, as your 13 September letter demonstrates a misunderstanding of how ETs are calculated at the Property and in the interests of clarity, TasWater's position is reiterated in full below.

Before we set out our position, we wish to make clear the following general observations:

- ETs are calculated on the basis of estimated sewage generated. As previously explained, if the Gilmours wish to be charged for the exact amount of sewage flowing from the Property, they should pursue installation of a meter to measure this.

- The methodology for calculating ETs for different accommodation types takes into account the seasonal nature of accommodation while also recognising that the majority of our sewerage costs are fixed and our systems are designed to cater for peak season demand.
- It is not appropriate for TasWater to discuss sewerage service charges applied to other proprietors' accounts as a comparison or reason to adjust those applied to the Gilmours' account.
- The method of assessing ETs for caravan parks is approved by the Economic Regulator as part of TasWater's Price and Service Plan process. Our prices, terms and conditions for ET calculations are a matter for determination by the Regulator, not TasWater. Once prices are determined according to the statutory process, TasWater must charge in accordance with the rates set out in the relevant Price and Service Plan.
- If you feel there is an alternative to the current methodology applied to the Tourist Park sector, we encourage you to make a submission through the Price and Service Plan consultation process.

TasWater's position regarding the ETs at the Property is as follows:

- i. From 1 July 2012 to 30 June 2015, the Economic Regulator approved one methodology for calculating ETs at caravan parks. This methodology was calculated using a target tariff rate and the industry type, building size and occupancy levels and is set out in *Price and Service Plan 2012-15 (PSP1)* (p 93; Schedule 2). During this period, the Gilmours were charged 11.60 ETs for the Property, which were calculated in accordance with the Regulator stipulated methodology.
- ii. From 1 July 2015 – 30 June 2018, the Regulator approved an alternative methodology for calculating ETs at caravan parks to a methodology based on discharge factor. The formula is set out in *Price and Service Plan 2015-18 (PSP2)* (p 61-2). TasWater levied the Gilmours' ETs for this period in accordance with this methodology, which was at a rate of 12.6 ETs from 1 July 2015 – 30 June 2016, and at a rate of 24.80 ETs from 1 July 2016 – 30 June 2018. When the Gilmours informed TasWater that there was a leak in their internal plumbing leading to excess water usage at the Property (and therefore increasing the ET calculation), TasWater adjusted the ETs to account for excess water usage and refunded the Gilmours' account in the amount of \$2,683.16. This refund meant that the Gilmours were effectively only charged 12.6 ETs during the entire period 1 July 2016 to 30 June 2018. This refund was provided in addition to other credits applied to the account on 4 September 2018, which totalled more than \$5000. For your reference, the bill setting out these refunds is attached to this letter (**Attachment 3**) and for the sake of completeness, I have also attached a breakdown of the ET charges refunded (**Attachment 4**).
- iii. Upon commencement of *Price and Service Plan 2018-21* from 1 July 2018 (**PSP3**), the Regulator approved the use of one of two methods for calculating ETs for caravan parks (p 127-130; Appendix 13). That is, ETs at caravan parks can currently be calculated by:
 - a. Discharge factor when annual water consumption is available or
 - b. Amenities at the property (e.g. number of cabins and toilet blocks) where annual water consumption data is not available. This will be the case where there is an unreliable meter, or if a property is unmetered. This method is referred to as the alternative method of calculation.



Accordingly, from the commencement of PSP3 on 1 July 2018 (when it was legally able to do so), TasWater moved from charging ETs at the Property based on discharge factor to charging based on buildings and amenities (the alternative method under PSP3). I have attached evidence of how the 15.4 ETs currently being charged at the Property are calculated using the alternative methodology (**Attachment 5**). This calculation is based on the Property containing one single residential dwelling, seven motel/hotel/resort rooms, 14 cabins and 10 amenities in separate amenities block.

We note that our records relating to the number of dwellings/cabins/amenities on the Property do not align with the number you provided in your letter of 15 May (six permanent resident cabins, five tourist cabins, three motel units, 22 caravan and camping sites, and one amenities block).

Accordingly, we request that you confirm of the number of dwellings/cabins/amenities at the Property since 1 July 2018 (when we commenced charging under the alternative method) so that we can ensure our calculation of ETs has been correct during this time. This includes confirming the number of toilets and showers in the amenities block.

If you would like TasWater to reassess the 11.6 ETs it charged during 1 July 2012 – 30 June 2015 (when ETs were also calculated according to the number of amenities at a property) please provide us with an accurate list of the amenities at the Property during this period so we can ensure the rates charged were correct.

Pending our review of ETs based on updated data of the amenities at the Property, and given that:

- TasWater's charging for ETs are based on Regulator approved methodologies
- TasWater has, at all times, charged in accordance with these methodologies and
- Within the parameters of the charging methodologies available to it, TasWater has always accommodated the individual circumstances of the Property (e.g. by reducing ETs when calculated on discharge methodology to account for leaking internal infrastructure and by moving to the alternative method as soon as this was approved by the Regulator)

TasWater rejects your argument that any further recalculation of ETs is required at the Property or that these charges are not due and payable. Rather, TasWater's position is that the methodology used to calculate ETs at the Property has taken into account the individual challenges and circumstances at the Property above and beyond what is required under the relevant Price and Service Plan, which has been to the Gilmours' benefit. Had ETs at the Property been calculated in strict accordance with the relevant Price and Service Plan, charges for sewerage services are likely to have been significantly higher.

Finally, we once more remind you that the calculation of ETs at caravan parks is a matter for the Regulator (rather than TasWater) to determine, and direct you to the comments of the Supreme Court of Tasmania in *Barnett v Tasmanian Water and Sewerage Corporation Pty Ltd* [2018] TASF 7 (24 October 2019) [20]:

Challenges to the determination of the Regulator are a matter for administrative review in accordance with the WSI Act, Pt 5. Once prices are determined according to the statutory process, the legislation permits the respondent to charge for services in accordance with the price as determined. It is not open to a person in the appellant's position to make collateral challenge to the determination of the Regulator in civil proceedings for recovery of charges made in accordance with the Regulator's determination.



g) Leaking Internal Plumbing and Calculation of Variable Water Charges

TasWater's position regarding the leaking internal plumbing is set out in our letter of 16 May 2019 and remains unchanged. In particular, we wish to reiterate:

- i. The Gilmours have been aware of their leaking private plumbing for over two years.
- ii. Despite not being responsible for internal plumbing, TasWater has a discretion to provide a once off leak remission for excess water usage charges incurred as a result of internal plumbing failures. TasWater provided a water leak remission to the Gilmours in April 2017 for \$4,454.34.
- iii. In addition, as a gesture of goodwill, TasWater agreed to read the meter every month to ensure greater visibility of water consumption and the Property and to enable the Gilmours to identify any leaks early and avoid higher water usage charges.
- iv. To further subsidise the cost of leaking private plumbing at the Property would be inequitable to our wider customer base.

We refer to your claim in your 13 September letter that the refusal to pay the full water usage owing on the account is justified, among other things, on the basis that:

- The Gilmours were required to engage a building surveyor and a plumber to produce reports for the Property to 'appease' TasWater and
- TasWater has shown a lack of effort and goodwill 'to date generally in respect of all matters'.

We respectfully disagree with your comments. Obtaining the necessary reports for work on private plumbing is always the responsibility of a property owner. TasWater take its legislative obligations seriously and requires all customers to comply with the appropriate processes. In any event, Council (rather than the Gilmours) bore the cost of engaging Benchmark Building Surveyors Pty Ltd to assess the need for a 100mm connection at the Property. The decision to obtain a second opinion on the matter is entirely the Gilmours' choice.

Further, and as set out above, TasWater has invested considerable resources in attempting to respond to the Gilmours' complaints over the years. We believe the offer contained in our 30 July letter is generous and reasonable and more than compensates the Gilmours for any inconvenience they may have suffered as a result of the ongoing dispute regarding the charges at the Property. Further reducing the outstanding charges for water usage at the Property is not only unjustifiable in the circumstances, but as noted above, would be inequitable to our wider customer base.

2. TasWater's Full and Final Settlement Offer (Revised Offer)

As at 1 October 2019, \$50,258.12 remains overdue on the account for the Property. No payments have been made to the account since July 2017.

Our letter of 30 July 2019 contained an offer to:

- discount of the total amount owing by the Gilmour's on the account by \$10,000
- Waive the Gilmours' fixed water charges in relation to the Property for the current billing period (July-September 2019) providing a total benefit of \$2,143.50 and
- Upon final resolution of the necessity of a 100mm connection at the property, undertake the necessary changes to the metering and connection at its cost (as detailed in the letter).



I consider that TasWater's offer of 30 July 2019 to be a reasonable and generous one in the circumstances, particularly considering:

- The historical nature of your allegations, including those related to the 'unlawful' meter installation by Council in 2004
- The payment of charges for the 100mm connection for many years, which can be deemed acceptance of these charges
- The Gilmours' failure to pursue options to downsize or bypass the 100mm connection, despite repeated encouragement over many years to do so from Cradle Mountain Water and TasWater
- The Gilmours' delay in repairing their private plumbing and
- The allegations made in your previous correspondence regarding TasWater's responses and efforts to date.

However, in the interests of fully and finally resolving this matter, TasWater is willing to revise its offer on the terms outlined below (**Revised Offer**).

Further Reduction on Outstanding Amounts Owning

TasWater is willing to further discount the total amount owing by the Gilmour's on the account by an additional \$10,000, bringing the total discount amount to **\$20,000**. This amount:

- Represents an approximation of the difference between the charges that have been levied on the account since 1 July 2009 (Cradle Mountain Water's incorporation) and those that would have been incurred, had the Gilmours been charged for a 32mm connection and a 100mm dedicated fire service for this period
- Recognises that the 100mm connection is necessary only to service the private fire hydrants on the Property and is not required to service the domestic water needs of the Property
- Reflects TasFire's instruction that the fire hydrants should not be removed from the Property and
- Is made on the assumption/understanding that the fire hydrants are owned by the Gilmours.

As in our letter of 30 July, the terms upon which TasWater will discount \$20,000 from the amount owing on the account are as follows:

- \$10,000 immediately upon entry by the Gilmour's into an appropriate payment plan for the outstanding charges on the account (Payment Plan) and
- An additional \$10,000 reduction in the amount owing on the account after six months of successful payments as agreed under the Payment Plan.

Revision of Time Periods and Other Issues

The remaining aspects of TasWater's offer of 30 July 2019 are revised as follows:

- TasWater will waive the Gilmours' fixed water charges in relation to the Property for the next billing period (January-March 2020)
- Upon final resolution of the necessity of a 100mm connection at the Property, TasWater will undertake the necessary changes to the metering and connection configuration as follows:
 - Should TasWater receive the necessary evidence from the Gilmours demonstrating that the fire hydrants did not transfer with the sale of the Property and are not



considered private property, TasWater will remove the 100mm meter from the 100mm connection and will cease charging the Gilmours for this connection.

- Should the fire hydrants remain as private property, upon the necessary instruction from the Gilmours, TasWater will:
 - At its own cost, install a bypass meter at the Property to ensure the Gilmour's are charged for a 100mm dedicated fire service and a 32mm connection at the Property or
 - Upon instruction that the necessary approvals have been obtained allowing the hydrants to be legally removed from the Property, fund the decommissioning of the 100mm connection and meter, following which, the Gilmours will only be charged a fixed charge for the 32mm connection at the Property and any variable water charges.
- Subject to the Gilmours providing an updated record of the number of buildings/cabins/amenities at the Property during the periods 1 July 2012 – 30 June 2015 and from 1 July 2018 (during which periods TasWater has calculated ETs based on number of dwellings/amenities), TasWater will reassess the ETs charged at the Property for these respective periods.

If, by the end of February 2020, TasWater has not received any instructions regarding the necessity (or not) of the 100mm connection and associated request(s) for changes to the existing infrastructure, TasWater will recommence charging for the 100mm connection (at the dedicated fire service rate) and the 32mm connection at the Property.

Further addition 30 July Offer: Ownership of 100mm Pipe

As set out above, TasWater recognises that resolution of the ownership of the 100mm pipe under the Property is desirable to avoid future dispute regarding maintenance of the 100mm pipe and/or future development at the Property.

TasWater is therefore willing (subject to execution of necessary documentation) to accept ownership of the 100mm pipe at the Property going forward. We reiterate our position outlined above that:

- This will impact future development at the Property, as TasWater imposes restrictions for works over, or near, our infrastructure
- If the location of the water pipe does not match the water pipeline easement registered on the title, an amendment of the easement will be required and
- The water pipeline easement registered on the title cannot be expunged.

For the avoidance of any doubt, TasWater's acceptance of ownership of the 100mm pipe does not in any way impact ownership of the fire hydrants, which it understands as belonging to the Gilmours (subject to contrary evidence being produced as detailed above).

If the Gilmours wish to retain ownership of the 100mm pipe, there will be no impact on any development in the future. The Gilmours are responsible for extinguishing the easement on the title and the costs of doing so.

3. Charges to be Applied to the Gilmours' Account Going Forward

In the interests of minimising any future dispute regarding rates to be charged at the Property, and subject to receipt of necessary information from the Gilmours, from 1 March 2020 TasWater will levy charges at the Property as set out below.



For the avoidance of doubt, I reiterate that the levies charged at the Property from 1 March 2020 in no way impact, or influence, the calculation of historic charges that TasWater maintains are due on the account.

Fixed Water Charges at the Property

If, as set out in paragraph (d) above, the fire hydrants remain on the Property as private fire hydrants, TasWater will from 1 March 2020 charge the Gilmours for a 32mm water connection and a 100mm water connection (at the dedicated fire service rate) going forward.

Alternatively, if in accordance with paragraph (d) above, the Gilmours produce evidence that the fire hydrants did not transfer with the sale of land and are considered public fire hydrants, TasFire will fund the necessary bypass of the 100mm connection and removal of the meter, and from 1 March 2020 will only charge the Gilmours for the domestic water connection at the Property.

Variable Water Charges at the Property

Going forward, variable water charges will continue to be charged at the property in accordance with the rates approved by the Tasmanian Economic Regulator. The Gilmours are not eligible for any further reductions caused by their leaking internal plumbing.

Sewerage Charges at the Property

As outlined at paragraph (f), TasWater will continue to charge for sewerage services at the Property a rate of 15.4 ETs based on the alternative method of calculating ETs under PSP3, subject to provision of updated dwelling/buildings/amenities at the Property. Any updated figures will require audit/confirmation by TasWater.

Charging under the alternative method of PSP3 will continue until there is reliable water usage at the Property to enable charging based on discharge factor. Once the Gilmours have repaired their internal plumbing, it is their responsibility to inform TasWater that this has occurred. TasWater requires 12 months of reliable water usage before it will charge based on discharge factor.

4. Options for Third Party Dispute Resolution

As stated at the outset of this letter, TasWater believes it has fully complied with its legislative and policy obligations regarding complaints and dispute resolution. We have invested significant time and resources responding to your lengthy correspondence over many months, have attempted to address and alleviate the Gilmours' complaints, including implementing actions above and beyond what we are required to do under legislation, and have provided what we consider to be a very generous offer to settle the matter.

Given your outright rejection of our previous offer, if the Gilmours do not wish to accept our updated and final offer or fail to provide the updated information we have requested to allow a further adjustment of our offer and/or charges going forward, we consider it unlikely that we will be able to resolve the matter without third party intervention.

Accordingly, if the Gilmours do not wish to accept the offer contained in this letter (or do not provide the additional information requested to allow adjustment of the offer), we suggest that there are two options available to them, being either referral of the matter to the Ombudsman or filing the matter in a court of competent jurisdiction.

If the Gilmours do not refer the matter to the Ombudsman or notify us of their intention to file the matter in court within 10 business days (and within a reasonable timeframe demonstrate evidence of same), TasWater will consider the matter resolved and will commence debt collection activities on this account.



Please do not hesitate to call should you wish to discuss any aspect of the Revised Offer with me.

Yours sincerely

A handwritten signature in black ink, appearing to read "J. Morse". The signature is written in a cursive, flowing style.

Jeremy Morse

Department manager Legal Services

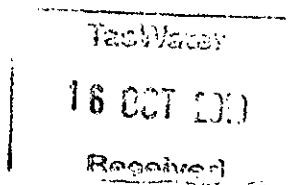


ATTACHMENT 1: 30B Old Bass Highway: Extract of total customer payments, credits and remissions on property account since 2009

14125373508	Transaction	19/07/2019	Interest Remission	-568.72	45,579.64
14123426138	Transaction	8/10/2018	Sewerage Service Charge (01/07/2017-30/06/2018)	-1,967.68	29,995.80
14123426137	Transaction	8/10/2018	Sewerage Service Charge (01/07/2016-30/06/2017)	-715.48	31,963.48
14119764860	Transaction	9/06/2017	Agency RECALL 12/06/2017	-5,000.00	9,367.06
14119403129	Transaction	26/04/2017	Remission Water Leakage	-4,454.34	9,790.95
14117124901	Transaction	16/06/2016	Agency RECALL 17/06/2016	-5,533.73	0
14116481195	Transaction	3/03/2016	Agency RECALL 03/03/2016	-4,759.77	0
14115875545	Transaction	24/12/2015	Agency RECALL 29/12/2015	-3,372.07	0
14115642436	Transaction	23/11/2015	Agency RECALL 23/11/2015	-2,886.11	3,372.07
14114305026	Transaction	12/06/2015	Agency RECALL 15/06/2015	-2,277.30	0
14113698372	Transaction	26/03/2015	Agency RECALL 26/03/2015	-2,341.72	0
14113222611	Transaction	13/01/2015	Agency RECALL 14/01/2015	-1,873.70	0
14112755733	Transaction	5/11/2014	Agency RECALL 05/11/2014	-1,659.50	0
14111490257	Transaction	9/06/2014	Agency RECALL 09/06/2014	-2,541.09	0
14110968231	Transaction	24/03/2014	Agency RECALL 24/03/2014	-1,284.65	0
14110286732	Transaction	6/12/2013	Agency RECALL 06/12/2013	-1,451.98	0
14109896848	Transaction	30/10/2013	Water Service Charge	-5.23	-114.63
14109896838	Transaction	30/10/2013	Interest on Adjustment	-1.21	-109.4
14109896837	Transaction	30/10/2013	Water Service Charge	-108.19	-108.19
14109632147	Transaction	13/09/2013	Agency RECALL 16/09/2013	-1,595.27	0
14109041559	Transaction	20/06/2013	Agency RECALL 21/06/2013	-1,611.79	0
14108640671	Transaction	8/04/2013	Agency RECALL 09/04/2013	-4,099.77	0
14108452014	Transaction	20/03/2013	Agency RECALL 21/03/2013	-329.99	4,099.77
14107781588	Transaction	4/12/2012	Remission Discretionary	-81	329.99
14107567079	Transaction	9/11/2012	Agency 22849 09/11/2012	-731.66	3,328.57
14106809162	Transaction	7/09/2012	Agency 20511 07/09/2012	-4,101.29	1,142.67



Tasmania Fire Service



Office of the Chief Officer

File: AD4706/ 08775/19
Officer: CA:AM

General Manager
TasWater
GPO Box 1393
HOBART TAS 7001

RE: WYNYARD CARAVAN PARK – FIRE SAFETY INFRASTRUCTURE

I write to you in pursuance of Section 56ZE of the *Water and Sewerage Industry Act 2008* following a request to comment on fire hose reels and more specifically fire plugs located at the Wynyard Caravan Park, 30b Old Bass Highway, Wynyard.

In relation to this request, Tasmania Fire Service (TFS) Officers from Building Safety and Bushfire Risk Unit have considered the operational firefighting needs and have concluded the removal of this fire safety and water infrastructure would result in considerable delays in providing intervention to the site due to the excessive distances from surrounding hydrants.

The TFS consider that this increase in intervention time to access a firefighting water supply and the likely resources required to provide a response to a fire requiring water from a hydrant system, would not meet the community's expectations without the provision of that infrastructure already on-site.

The hydrants and hose reels were likely installed to comply with Council technical requirements for water infrastructure at the time the buildings/site was approved. It would be clearly detrimental to firefighting efforts and provide an unacceptable risk to the community to have this firefighting infrastructure removed.

TFS does not support the removal of the existing water and fire safety infrastructure. It should remain in place and be maintained in good operational order. If you have any questions in relation to this issue please contact Fire Safety Advisor Daniel Grieg on 6777 3666.

Yours sincerely

Chris Arnol
CHIEF OFFICER

10 October 2019



Tasmanian Water & Sewerage Corporation Pty Ltd
ABN 47 162 220 153

C C & G A Gilmour
Beach Retreat Tourist Park
30b Old Bass Highway
WYNYARD TAS 7325



054

Statement no. 7411606108

Issued 04/09/2018

Charge details

SERVICE ADDRESS **INSTALLATION NUMBER** 440028098
30B Old Bass Highway WYNYARD TAS

FIXED OR SERVICE CHARGES

Full Fixed Water Charge - 100mm (01/07/18-30/09/18) \$1,955.45
Full Fixed Sewerage Charge x 15.4 ETs* (01/07/18-30/09/18) \$1,902.25
\$3,857.70

VARIABLE USAGE CHARGES

Variable Water Charge (1 kL @ \$1.0202/kL) \$1.02
(18/04/18-30/06/18)

CREDIT NOTES

Variable Water Charge (-1 kL @ \$1.0202/kL) (18/04/18-30/06/18) -\$1.02
Full Fixed Water Charge - 100mm (01/07/18-30/09/18) -\$1,955.45
Full Fixed Sewerage Charge x 24.8 ETs* (01/07/18-30/09/18) -\$3,063.36
-\$5,019.83

TOTAL NEW CHARGES **-\$1,161.11**

*1 equivalent tenement (ET) represents 1 residential dwelling.

If paying in person please keep account intact



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ALL ENQUIRIES & EMERGENCIES 13 6992

EMAIL enquiries@taswater.co.n.au

WEBSITE www.taswater.com.au

POSTAL GPO BOX 1393 HOBART TAS 7001

Tax Invoice indicates taxable supply

Account no. 240028098

Overdue \$27,294.52

Total due \$31,153.24

Due date 9/10/2018

Overdue amount payable immediately

Account summary

Last Account \$32,314.35

Paid / Adjusted \$0.00

Balance \$32,314.35

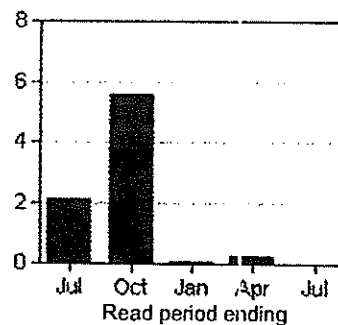
New Charges -\$1,161.11

Total Due \$31,153.24

GST \$0.00

Your usage

Average daily usage in kilolitres



Current av. daily use: 0.01 kL/day

Current av. daily cost: \$0.00/day

Payment slip

Account no. 240028098

Overdue \$27,294.52

Total due \$31,153.24

Due date 9/10/2018

See over page for payment options

Account details

METER DETAILS

METER	PREVIOUS READING	CURRENT READING	DAYS	USAGE (kL)
FA0190	17/04/2018 000034	11/07/2018 000035	85	1
TOTAL USAGE (kL.)				1

METER DETAILS - Credit Readings

METER	PREVIOUS READING	CURRENT READING	DAYS	USAGE (kL)
FA0190	17/04/2018 000035	11/07/2018 000034	85	-1
TOTAL USAGE (kL.)				-1

Additional information

CONCESSIONS

If you hold a DHS Health Care Card, DHS or DVA Pensioner Concession Card or DVA Health Card (formerly called a Repatriation Health Card) All conditions within Australia and Totally and Permanently Incapacitated (TPI) known as Gold Cards; you may be entitled to claim a concession on water and sewerage access charges. To be eligible, the property must be your principal place of residence, the name and address on the card must match those on your account. If you received a concession on your last statement you do not need to reapply. Please contact us if your concession card expires to provide details of the new card and expiry date.

PAYMENT ASSISTANCE

If you are experiencing difficulty paying your account, please contact us for a confidential discussion on how we may help you. TasWater has a Hardship policy and we can assist in arranging suitable payment plans for customers.

LATE PAYMENTS

Interest and other penalties may be applied to overdue accounts. Daily interest is charged on overdue amounts from the due date at the monthly 90-day Bank Accepted Bill rate plus 6% in accordance with the Tasmanian Water and Sewerage Industry Customer Service Code and will be shown on your next account.

CHANGE OF CONTACT DETAILS/OWNERSHIP

Please let us know when your contact details change so we may keep our records up to date. When ownership of a property changes, liability for payment for services remains with the owner recorded with us until a "Change of Ownership Form" is lodged by the vendor, purchaser, solicitor or agent acting on their behalf.

METER READINGS AND ACCESS TO WATER METERS

We endeavour to read your water meter on a quarterly basis. We seek your cooperation in ensuring that fences, locked gates, dogs or other obstructions do not prevent us from reading your meter. If safe and easy access to the water meter is not available an estimated account may be issued.

PRIVACY INFORMATION

We are concerned for your privacy and only collect personal information that is necessary for the performance of our functions under The Water and Sewerage Industry Act 2008. Should you require access to the information that is retained by us please contact us.

HEARING OR SPEECH IMPAIRED?

Call us via the National Relay Service:
TTY users phone 13 3677 then ask for 13 6992.
Speak and Listen (speech to speech relay) users phone 1300 555 727 then ask for 13 6992.

INTERPRETER SERVICES

We will provide access to an interpreter service provided by the Australian Government's Translating and Interpreting Services (TIS).

To access the service please call 13 1450.

Italiano: Interpreter Service 13 1450.

Deutsch: Dolmetscher Service 13 1450.

汉语: 传呼服务 13 1450.

How to pay



Direct Debit

Please phone 13 6992 for details and to make arrangements.

Customer Service Centres

Devonport - 18 Steele Street
Launceston - 36 - 42 Charles Street
Moonah - 169 Main Road



BPAY®

Contact your financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. For more info: www.bpay.com.au

Bill Code: 117309

Ref: 39932400280987

BPAY View® - View and pay this bill using internet banking.

BPAY View Registration No.:



Service Tasmania

Internet www.service.tas.gov.au

Billpay Code: 8263

Ref: 399324002809853



Phone Telephone Service Tasmania on 1300 729 859

Billpay Code: 8263

Ref: 39932 40028 09853



In Person At any Service Tasmania Shop. For opening times and locations call 1300 135 513 or go to



Centrepay

Contact Centrelink to arrange Centrepay payments.

Visit:

humanservices.gov.au/centrepay



Post Billpay

Pay in-store at Australia Post.



Mail

Send this slip with your cheque (no staples) to: GPO Box 1393



ATTACHMENT 4: BREAKDOWN OF ET REFUND APPLIED 4 SEPTEMBER 2018

Waste Charges					
Affected Charge Period:			1/07/2016 - 30/06/2017		
Existing charges issued	Connection type:	Connected sewerage	Revised charges	Connection type:	Connected sewerage
	Total ETs/service qty:	24.80		Total ETs/service qty:	12.6
	Annual rate:	\$331.88		Annual rate:	\$596.44
	Quarterly charge:	\$2,057.65		Quarterly charge:	\$1,878.78
	Net charges issued:	\$8,230.60		Net corrected charges:	\$7,515.12
			Net period balance		
			-\$715.48		
Affected Charge Period:			1/07/2017 - 30/06/2018		
Existing charges issued	Connection type:	Connected sewerage	Revised charges	Connection type:	Connected sewerage
	Total ETs/service qty:	24.80		Total ETs/service qty:	12.6
	Annual rate:	\$400.56		Annual rate:	\$632.24
	Quarterly charge:	\$2,483.47		Quarterly charge:	\$1,991.55
	Net charges issued:	\$9,933.88		Net corrected charges:	\$7,966.20
			Net period balance		
			-\$1,967.68		
Affected Charge Period:			1/07/2018 - 30/09/2018		
Existing charges issued	Connection type:	Connected sewerage	Revised charges	Connection type:	Connected sewerage
	Total ETs/service qty:	15.40		Total ETs/service qty:	15.4
	Annual rate:	\$494.09		Annual rate:	\$658.16
	Quarterly charge:	\$1,902.24		Quarterly charge:	\$2,533.91
	Net charges issued:	\$1,902.24		Net corrected charges:	\$2,533.91
			Net period balance		
Previous Sewerage Service / Trade Waste Charge adjustment(s) applied ¹					\$0.00
Account adjustment					-\$2,683.16
Interest Applicable ²					\$0.00
Total for approval ⁴					-\$2,683.16

ATTACHMENT 5: SCREENSHOT OF CURRENT ET CALCULATION AT 30B OLD BASS HIGHWAY

PSP3 - ET Calculation - 1/7/18 to 30/6/21					
End Use Code and Property Type	Quantity	Measure	Multiplier	Trade Waste	ET Quantity
RE01 - Single residential dwelling (includes units/flats/apartments/granny flats regardless of number of bedrooms)	1	Dwelling	1	0	1
AS03 - Services - motel/hotel/resort room - medium density	7	Room	0.45	0	3.15
AS01 - Caravan park - caravan/cabin/camping sites, including long term sites. (Secondary Method - "Cabin" - Where DF is not suitable)	14	Self Contained Cabin	0.45	0	6.3
AS01 - Caravan park - caravan/cabin/camping sites, including long term sites. (Secondary Method - "Amenity" - Where DF is not suitable)	10	Amenity in separate amenities block	0.5	0	5
Service Type	Billing Change Required? - Reason for change			ET Total	15.4
Full Service	No Change				
Rule number - (Basis of change - Scenario - Effective date)					Effective date
No change for PSP3 - 15.4 Ets correct from 1/7/18. Not suitable for DF as meter was faulty					
Comments:					

Jeremy Morse
Department Manager Legal Services

27 December, 2019

By email only: Jeremy.Morse@taswater.com.au

WITHOUT PREJUDICE SAVE AS TO COSTS

Dear Mr Morse,

**30b Old Bass Highway, Wynyard ("the Property") – 100mm Meter Dispute, Overcharging
ETs & Excess Water Charges**

I refer to your letter dated 13 December, 2019.

Your offer is rejected.

There are many inaccuracies (both factual and legal) in the information you have presented along with contradictions from previous communications. That said, the feelings depicted in your comment *"I do not consider there to be merit in continuing to engage in lengthy written correspondence which has done little to resolve the substantive issues disputed"* are mutually held ones, whereby attempts to resolve this matter through direct discussions with your office have been exhausted.

The three (3) month delay in responding to my letter of 13 September, 2019 (despite requesting a response within 14 days) only to provide mostly regurgitated information from previous correspondence, failing to address all the various questions raised in my letters of both 13 September, 2019 and 7 June, 2019, the lack of understanding of PSP3 and the applicable fire regulations all suggest the need to remove this file from your desk in an attempt to reach a resolution to these long standing issues.

I will be referring this file to the Ombudsman in the New Year. I note that in advising you of this, you have requested evidence of same to be provided to you within a 'reasonable timeframe'. Given your office considers three (3) months reasonable to provide a response of sorts, you can rest assured that whilst I will attend to this referral outside of my paid employment in a timely manner, it will occur well within the three month turn around your office deems acceptable in this matter.

Kind Regards,



Ryan Gilmour

Ph: 0417 582 622

TASMANIAN LAND TITLES OFFICE

Transfer

Section 58 Land Titles Act 1980.



THE TRANSFEROR for the consideration specified below (receipt of which from the transferee is hereby acknowledged) HEREBY TRANSFERS to the TRANSFEREE the estate and interest specified in the land described hereunder subject to the mortgages and encumbrances registered thereon including any created by dealings lodged for registration before the lodging of this transfer.

DESCRIPTION OF LAND				
Folio of the Register				If subject to existing mortgages - list here If part of land - describe part If easement created- describe easement
Volume	Folio	Volume	Folio	
133273	1			

Estate and Interest:

Estate in Fee Simple subject to the conditions set forth on the attached annexure page

Transferor:

THE CROWN, GPO BOX 44A HOBART 7001

Transferee:

GRAEME ALAIN GILMOUR, Business Proprietor and CHERYL CHRISTINE GILMOUR, Business Proprietor, both of 30B Old Bass Highway, Wynyard, Tasmania, as tenants in common in equal shares.

Consideration:

EIGHTY-FIVE THOUSAND DOLLARS (\$85,000.00)

Dated this day of

"SEE ANNEXURE PAGE FOR EXECUTION CLAUSE"

Land Titles Office Use Only

T
Version 1

Stamp Duty

The Crown
REFERENCE

NTEE

PLAN OF SURVEY

BY SURVEYOR K.R. Mitchell of K.R. Mitchell & Assoc. P/L
P.O. Box 712, Devonport, 7310.

LOCATION

TOWN OF WYNYARD

SP133273

APPROVED
EFFECTIVE FROM

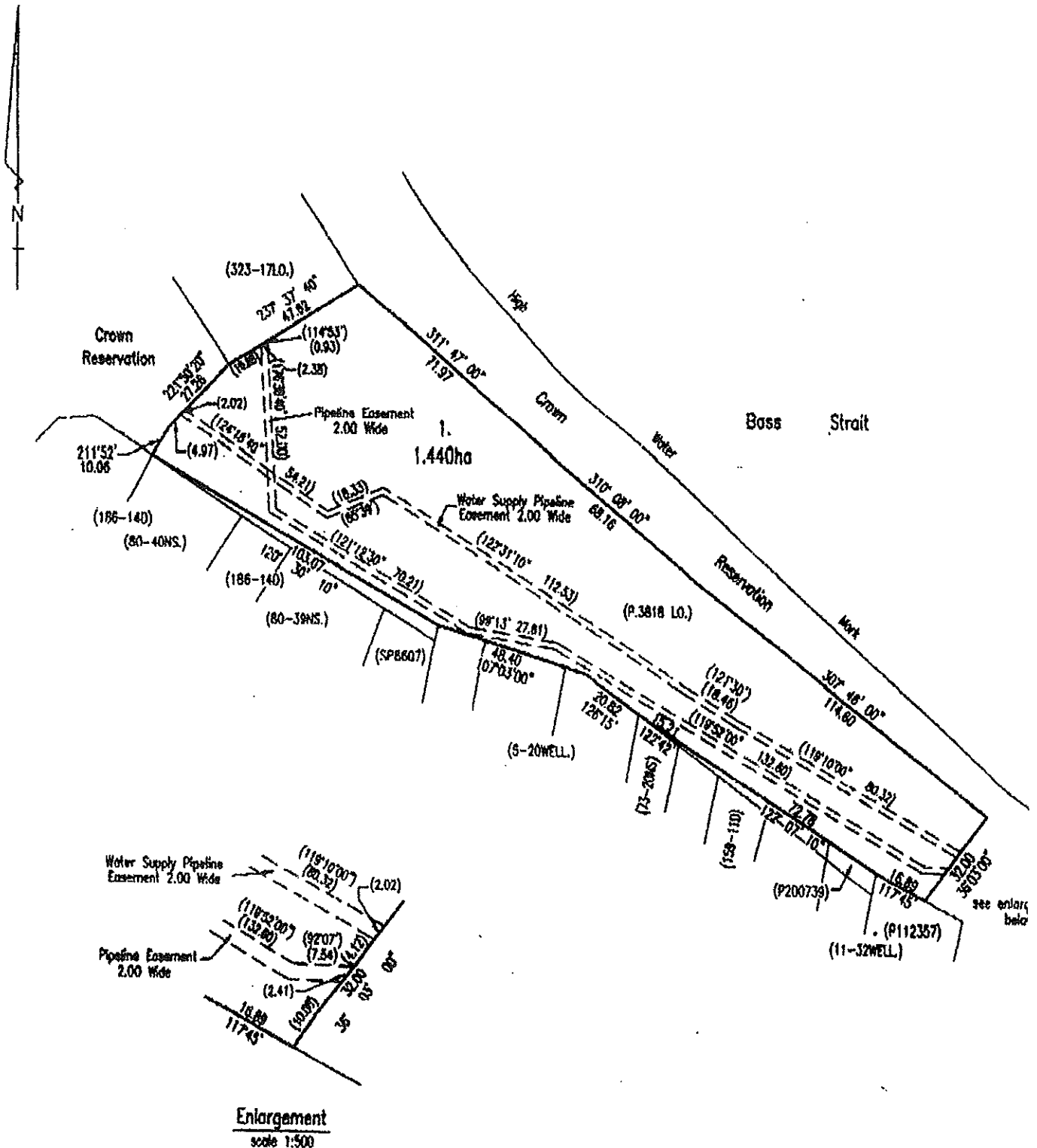
Recorder of Titles

SCALE 1:1250

LENGTHS IN METRES

MAPSHEET MUNICIPAL
CODE No 127

LAST UPI No

LAST PLAN
No P.3818 LO.ALL EXISTING SURVEY NUMBERS TO BE
CROSS REFERENCED ON THIS PLAN

SCHEDULE OF EASEMENTS	Registered Number
NOTE: THE SCHEDULE MUST BE SIGNED BY THE OWNERS & MORTGAGEES OF THE LAND AFFECTED. SIGNATURES MUST BE ATTESTED.	

PAGE 1 OF 1 P/

EASEMENTS AND PROFITS

Each lot on the plan is together with:-

- (1) such rights of drainage over the drainage easements shown on the plan (if any) as may be necessary to drain the stormwater and other surplus water from such lot; and
- (2) any easements or profits a prendre described hereunder.

Each lot on the plan is subject to:-

- (1) such rights of drainage over the drainage easements shown on the plan (if any) as passing through such lot may be necessary to drain the stormwater and other surplus water from any other lot on the plan; and
- (2) any easements or profits a prendre described hereunder.

The direction of the flow of water through the drainage easements shown on the plan is indicated by arrows.

Pipeline Easement

Lot 1 is subject to the right to convey sewage by means of pipes under the strip of land 2 metres wide shown as "pipeline easement" on the plan passing through such lot at a depth of not less than 1/3 of a metre for the purpose of conveying sewage through the said pipes and the right for the Waratah/Wynyard Council (hereinafter called "the Council") its servants or agents from time to time and at all times if the Council, its servants or agents think fit to enter upon the said strip of land to lay, inspect, repair, cleanse and mend any such pipes without doing unnecessary damage to the said strip of land.

Water Supply Pipeline Easement

Lot 1 is subject to the right to convey water by means of pipes under the strip of land 2 metres wide as "water supply pipeline easement" passing through such lot at a depth of not less than 1/3 of a metre for the purpose of conveying water through the said pipes and the right for the Waratah/Wynyard Council (hereinafter called "the Council") its servants or agents from time to time and at all times if the Council, its servants or agents think fit to enter upon the said strip of land to lay, inspect, repair, cleanse and mend any such pipes without doing unnecessary damage to the said strip of land.

SIGNED by PERRY JOHN FOSTER)
 being and as a PROPERTY MANAGER)
 prescribed in Statutory Rule No. 72 of 1999 and)
 pursuant to an Instrument of Delegation dated the)
 23rd day of September 1999 in the presence of:-)

P. Foster

Signature of witness: *[Signature]*
 Occupation: PUBLIC SERVANT
 Address: Hobart

(USE ANNEXURE PAGES FOR CONTINUATION)

SUBDIVIDER: FOLIO REF: 133273 SOLICITOR & REFERENCE: CROWN SOLICITOR 6379 AC	PLAN SEALED BY: Waratah/Wynyard DATE: REF NO. _____ Council Deleg
---	--

NOTE: The Council Delegate must sign the Certificate for the purposes of identification

PIN OR STAPLE HERE
DO NOT GUM THIS
FORM TO THE INSTRUMENT

ANNEXURE PAGE

PAGE 2 OF 2 P.

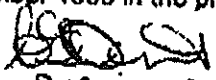
Vol. 133273 I

Limited to a depth of 15 metres below the surface and reserving unto the Crown the right at all times of making constructing in or on the said piece of land such and so many drains sewers and waterways for sanitary or other purposes as may be deemed expedient and also the right of altering amending cleansing or repairing such drains sewers and waterways and excepting and reserving thereout the property in all gold silver copper tin and other metals ore mineral and other substances containing metals and in all coal and mineral oil and in all gems and precious stones in or upon the said piece of land and any other minerals as defined in the *Mineral Resources Development Act 1995*.

The Transferor as Vendor shall not be required to fence.

SIGNED by PERRY JOHN FOSTER
being and as a PROPERTY MANAGER
prescribed in Statutory Rule No. 72 of 1999 and
pursuant to an Instrument of Delegation dated the
23rd day of September 1999 in the presence of:-

Signature of witness:
Occupation:
Address:


PUBLIC SERVANT
HOBART

NOTE:- Every annexed page shall be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing.

27 May, 2020

Ombudsman Tasmania
GPO Box 960
HOBART TAS 7001

By email only: ombudsman@ombudsman.tas.gov.au

Attention: **Leah Dorgello**

Dear Ms Dorgello,

Response to Questions Raised
Matter No: O2001-127

I refer to your letter of 12 May, 2020 and subsequent telephone attendance on 19 May, 2020.

I note that during the abovementioned call, we spoke (amongst other things) about the matters raised in the Report from Mr Deverell of Benchmark Building Surveyors Pty Ltd dated 12 June, 2019 and how those issues were addressed between ourselves and the other players in this matter, namely the Waratah Wynyard Council, TasWater and Braddon Building Surveying. Thankfully our son, Mr Ryan Gilmour ("my Son") (who ironically has acted in the capacity as barrister for TasWater in years gone by) has documented everything in writing to ensure all parties can be held accountable regarding what has taken place as it became apparent early on that TasWater and Council did not like to document communications I had had with their office regarding this matter in years previous.

To keep things simple and as to the point as possible, what follows is a chronological summary of what occurred between the Council, ourselves, Mr Deverell and Mr Magnus making sure the correspondence from all parties is properly documented so that there are no gaps for you to consider. After I have taken you through these matters I will turn to distill some of the matters from your letter of 12 May, 2020 and address same.

1. A meeting was scheduled to take place at our property, situated at 30b Old Bass Highway, Wynyard ("our Property") on Friday 8 February, 2019 between Paul West (General Manager of Waratah Wynyard Council during the years 2003-04 and at that time was General Manager of the Devonport Council), Shane Crawford (General Manager of the Waratah-Wynyard Council), my wife, my Son and myself. In preparation for this I caused for all parties to be sent an email with attached letter summarising the history of the matters at hand, the current predicament we were facing and the assistance we were seeking from both Mr West and Mr Crawford. The Meeting was scheduled by us, as after years of trying to reason with TasWater (and their predecessor, Cradle Mountain Water) and having them fail to document conversations and otherwise understand the issue on even the most basic of levels, we determined it appropriate to formerly seek the assistance of Council to clarify some of the basic issues which would therefore support our position moving forward with TasWater and more specifically in preparation for future litigation. It was after all Council's decision to disobey their own resolutions passed at the Council meeting on 17 November, 2003 which caused for the 100mm meter to be placed on our Property without our knowledge or consent that formed the entire basis of TasWater's

argument that we needed to pay for the fixed costs both historically and moving forward at that time. A copy of this email of 7 February, 2019 with attached letter of even date and relevant minutes from the Council Meeting on 17 November, 2003 are hereby attached and marked "A" for your records and ease of reference.

2. The meeting took place at our Property on 8 February, 2019 whereupon both Mr West and Mr Crawford agreed to engage an "Engineer" for us as our agent (with their bill to be paid by the Waratah-Wynyard Council) This show of "generosity" from the Council came about in light of the fact they could see the predicament they had put us in as a result of the historical decision to place the 100mm meter onto the Property without our consent and despite not complying with the resolutions of Council in their meeting on 17 November, 2003.
3. My Son chased this matter up with Council on 5 March, 2020 whereby we sought information as to the name of the "Engineer" Council had engaged for us, expecting full well that once contact had been made and our details had been provided, that this expert would be speaking to us directly and attending our Property to property consider the matter and report accordingly. We received a response from Mr Crawford on 6 March, 2019 advising that Benchmark Building Surveyors Pty Ltd had been engaged and that Mr Deverell of that office was appointed to undertake this job. It was specifically noted that: *"...we provided him with your contact details to facilitate any onsite visitation"*. Attached hereto and marked "B" is a copy of this chain of emails.
4. In mid-March, 2019 my Son called Mr Deverell of Benchmark Building Surveyors Pty Ltd to see how he was progressing with providing his Report, given we had not had any contact from him. I am reliably informed by my Son that the following occurred:
 - (a) Mr Deverell advised that the 32mm pipe (or equivalent) that was in place and served **all** the water needs of the Property was sufficient;
 - (b) Mr Deverell advised that he had received some correspondence from Robbie Whiteway of Tasmania Fire Service which meant he could not support removing or otherwise decommissioning the 100mm connection to the Property that was servicing the 100mm water main;
 - (c) Mr Deverell advised that he did not intend to provide a Report on this matter; and
 - (d) My Son requested to see a copy of the correspondence he had received from Mr Whiteway and Mr Deverell took my Son's details and would forward him a copy of this correspondence.
5. On 28 March, 2019 Mr Deverell emailed my Son providing him with a copy of the email from from Mr Whiteway of Tasmania Fire Service from 13 March, 2019. I specifically draw your attention to Mr Deverell's comment *"I have advised Council I believe a report form myself is unnecessary as I would only being (sic) referring to the statement from Tas Fire and would not go against this advice"*. The legal issues that arise from this statement may not be immediately clear, but will become clear later in this correspondence when I attach some correspondence received from

Braddon Building Surveying. I do however take the opportunity to direct you to ss 131 and 132 of the *Building Act 2016* at this point. Attached hereto and marked "C" is a copy of this email chain of correspondence.

6. Rather than argue with Mr Deverell as the 'middle man' at this stage, my Son wrote directly to Mr Crawford with his concerns as our agent. Attached hereto and marked "D" is a copy of this correspondence dated 15 April, 2019 with covering email of even date (Note: I have not attached the email from Tas Fire and the Letter to Juliet Mercer as the former is attached at "C" above and the letter to Ms Mercer was provided to you in our original tabulated file to your office). Rather than paraphrase the important aspects of that letter, for ease of reference I have highlighted in yellow some of the more pertinent points to draw your attention to. It is worth pointing out at this point that my Son (as a lawyer) and I were already aware that the law did not require such firefighting infrastructure in place (and therefore did not require a 100mm water main) and as such you will note we were insistent in obtaining a report from Mr Deverell which properly addressed the various issues discussed with Mr West and Mr Crawford at our onsite meeting on 8 February, 2019 in order to assist us in our dispute with TasWater. You will note that this correspondence even went so far as to spelling out in separately lettered paragraphs what the report ought to confirm in accordance with both fact and the law. The final aspect of the letter was seeking correspondence from Mr Crawford to confirm a couple of uncontroversial pieces of historical information which needed to be documented in evidence as we prepared the matter moving forward for litigation.
7. After not receiving a response from Mr Crawford for nearly a month, on 9 May, 2020 he provided us with what could best be described as a 'holding response'. My Son followed up this 'holding response' by way of email on 20 May, 2019 whereby it was determined that to assist Mr Crawford in getting us a response of substance we would again provide him with some exact wording he could simply copy and paste onto his letterhead in order to expedite the matter. Attached hereto and marked "E" is a copy of this chain of emails.
8. On 21 May, 2019 Mr Crawford provided a brief response by way of email advising that Mr Deverell would need a further "two weeks" to finalise his report. Attached hereto and marked "F" is a copy of this email.
9. On 13 June, 2019 my Son received an email from Mr Crawford which simply attached Mr Deverell's report dated 12 June, 2019. Attached hereto and marked "G" is a copy of said email and report for ease of reference.
10. My wife and I then sat down with my Son and digested the contents for Mr Deverell's Report. Suffice to say, its factual inaccuracies, complete absence of reference to legislation or the National Construction Code and failure to undertake any site inspection of the Property whatsoever was (and this cannot be stated any less harshly) negligent. To this end, it is worth noting *Occupational Licensing (Building Surveyors) Code of Practice 2018*. I attach marked "G1" a copy of this document as it makes for interesting reading. I specially draw your attention to each and every paragraph of clause 2 therein.

11. To place our concerns surrounding Mr Deverell's report in writing, my Son wrote to Mr Crawford by way of letter dated 16 June, 2019 picking apart in detail each and every aspect of Mr Deverell's report. The letter and covering email of even date is attached hereto and marked "H" (Note: I have not attached any of the attachments referred to in this email and letter as you already have them in the folder provided to you at first instance and for the purpose of this correspondence is not required).
12. It was simultaneously determined that given we were Mr Deverell's client (as by Council engaging his services they were merely acting as our Agent in accordance with both our verbal and written agreement with the Council as well as by legislation in accordance with ss28 & 29 of the *Building Act 2016*) we wrote to Mr Deverell on 16 June, 2019 alerting him to his shortcomings and providing him an opportunity to rectify his oversights. Attached hereto and marked "I" is a copy of this letter together with covering email of even date.
13. On 27 June, 2019 my Son called Mr Deverell and spoke to him between 2:18pm and 2:20pm. Attached hereto and marked "J" is a copy of my Son's contemporaneous telephone attendance note. To assist in deciphering his hand writing, I can advise it says:
 - *[Mr Deverell] said he 'skimmed' my letter;*
 - *[Mr Deverell is] not redrafting it as Council haven't asked him to.*
 - *[Mr Deverell] said may redraft it but would need Council to request it.*
14. On 28 June, 2020 Mr Crawford emailed my Son advising that we could meet with himself and the Mayor (Mr Robbie Walsh) as per our request, at the Council Chambers on 2 July, 2019 at 9:00am. This was swiftly accepted by way of email on even date. A copy of this chain of correspondence is attached and marked "K".
15. My Son and I prepared an Agenda for ourselves which we took into the meeting on 2 July, 2019 at the Council Chambers in order to ensure that all important issues were addressed. A copy of this Agenda with some handwritten notations from that attendance are attached hereto and marked "L" for completeness.
16. The most astounding thing to come from the meeting (other than none of those Council members present bringing so much as a pad of paper to the meeting let alone a copy of their file on this matter) was hearing Mr Crawford say the words or words similar to: *"We don't need to ask Mr Deverell to redo his report, as he has provided his report which is all that is required"*. Despite my Son trying to explain to Mr Crawford the issues with this sentiment, using such analogies as *"if that view were correct, then Mr Deverell could have done no more than write his name on a piece of paper to satisfy you that he had complied with the terms of his engagement"* the penny still did not seem to drop for Mr Crawford, Mayor Walsh or Mr Corey Gould (Manager of Engineering Services at the Council who was also present for part of the meeting).
17. Again to properly document everything in preparation for litigation, my Son followed up the meeting in writing by way of email to Mr Crawford and Mr Gould (who was present for the first part of the meeting) on 5 July, 2019. A copy of this email is attached hereto and marked "M". This was the first threat made that if the Council

failed to demand Mr Deverell to review and redraft his report, we would be engaging an alternative 'competent' Building Surveyor to undertake this task.

18. Mr Gould responded by way of email on 12 July, 2019 confirming that the Council were 'satisfied' with Mr Deverell's findings and would not be asking Mr Deverell to redraft his report. My Son responded by way of email to Mr Gould on 16 July, 2019 expressing our dissatisfaction with the way Council have viewed this matter, then on 18 July, 2019 Mr Gould provided one final email on this matter which made crystal clear their position and left us with no choice but to engage an alternative competent Building Surveyor at our expense. Attached hereto and marked "N" is a copy of this chain of emails. I pause at this point to point to note the following:

(a) The reference by Mr Gould to the Council being our "*Commissioning Agent*". This is correct both factually and legally as it coincides with the agreement reached between the Council and us verbally on 8 February, 2019, in writing by way of all correspondence in this matter and by legislation in accordance with ss28 & 29 of the *Building Act 2016*. By refusing to request Mr Deverell to reconsider and redraft his Report, they have ignored their Principal (My Wife and I) and have thus breached the agency agreement. This breach becomes even more significant due to the fact that **without our consent or knowledge**, they released Mr Deverell's Report to *TasWater* which they have been using against us ever since! My Son has described this as one of the most flagrant breaches of the law of Agency and the privacy legislation that he has seen by a Council or government body in his career to date and furthermore I note that this is an egregious breach of the Council's own "Privacy Policy". To this end, attached hereto and marked "O" a copy of the Council's own *Privacy Policy*. By their unlawful release of this information to *TasWater* they have essentially breached half of the clauses within their own policy, but I specifically draw your attention to clauses 4.2 and 4.3 therein. Understanding the above is crucial to being able to understand how Mr Deverell's report fits into the picture in this matter or more specifically, why it is not lawful for any party (other than ourselves) to rely upon same. The creation of expert reports in contemplation of litigation is a matter of privilege. This means:

- (i) The Council was legally obliged to take all our instructions and concerns to Mr Deverell. They had no legal authority to unilaterally say they have fulfilled their obligations and refuse to follow instructions;
- (ii) TasWater should not have received a copy of Mr Deverell's report;
- (iii) In receiving a copy of a privileged document (by accident, vindictive behaviour, ignorance or otherwise) as a matter of law they are not entitled to rely upon it (Please see letter to Mr Jeremy Morse of TasWater dated 13 September, 2019 (previously provided to you) where this was explained to him).
- (iv) The Waratah-Wynyard Council ought to be appropriately dealt with for their failures to comply with the *Privacy Act 1988*, the law of Agency, their own Privacy Policy et cetera (Note: In approaching your office we specifically left this complaint alone initially as our main goal is/remains to resolve this matter with TasWater);

- (v) Mr Deverell ought to have acted upon our demand for him to review and redraft his report (noting that we approached him directly as to this issue due to this very concern as per the communications attached above) as we were at all times his client.
 - (vi) The reference by Mr Gould to Council being "...satisfied with the findings of said report" in circumstances where by relying on the report from Mr Deverell conveniently enabled them to cover up their historical errors/negligent actions surrounding the 100mm water main and thus must bring into question both the Council's motivations in undertaking the aforementioned actions and of course, the nature of any communications they had with Mr Deverell around this matter in light of his professional failings as a Building Surveyor.
19. Simultaneous to the chain of emails between my Son and Mr Corey Gould noted above, on 8 July, 2019 we received an email from the Council attaching a letter from Mr Crawford dated 5 July, 2019 who essentially copied and pasted the wording my Son had been asking him to confirm on Council's letterhead for the previous 5 months, regarding the fact that we:
- (a) We were never approached by Council to take formal ownership or future responsibility for the 100mm fire main;
 - (b) We never agreed in any way, shape or form to taking formal ownership or future responsibility for the 100mm fire main; and
 - (c) That those were all requirements set out in the Minutes of the Council meeting on 17 November, 2003.

Attached hereto and marked "P" is a copy of said email and letter.

20. On 6 August, 2019 my Son wrote to Mr Crawford of the Council advising them that my Son had recently been informed by Mr Jeremy Morse of TasWater (Department Manager of Legal Services) that he had received a copy of Mr Deverell's report directly from the Council! You will note that they were put on notice as to the breach of privacy and the substantial financial damages at stake. Importantly, Mr Crawford was given the opportunity to "...explain in writing the full circumstances surrounding the release of this report to TasWater so I can fully consider the direction this matter ought to take". Attached hereto and marked "Q" is a copy of this letter with covering email of even date.
21. At this point we realised that we had exhausted all our realistic amicable options to have the issue of Mr Deverell's report resolved and that matters were now getting somewhat out of control due to Council failing to follow the instructions of their Principal (my Wife and I) and then the unlawful release of Mr Deverell's report to Council and who through Mr Morse of TasWater believed he could use this unlawfully obtained (and privileged) document against us. As such, we engaged the services of Building Surveyor Mr Barry Magnus of Braddon Building Surveying to provide a competent report to rectify the glaring issues in Mr Deverell's Report.

22. Mr Barry Magnus was engaged by us on or about 9 August, 2019.
23. Mr Magnus produced his report on the 100mm Fire Main on 16 August, 2019. I am aware this report was provided to you in our folder of documents sent by post to your office at the outset, but for ease of reference, I attach marked "R" a colour copy of same.
24. Please note that Mr Magnus took the time to attend our Property to inspect it (as he is required to do under the 'Code of Practice' within the *Occupational Licensing (Building Surveyors) Code of Practice 2018* and in order to apply the factual scenario to the legislation in question). This is to be contrasted with Mr Deverell's failure to attend the Property (or even contact us as his client) and apparent disregard for his professional obligations contained within the *Occupational Licensing (Building Surveyors) Code of Practice 2018*
25. After digesting Mr Magnus' report, given all the steps that were being taken were in the contemplation of litigation whereby Mr Magnus would be called as an 'expert witness', with my Son's guidance, we sought from Mr Magnus a response to specific questions necessary to address the legitimacy of the matters raised by Mr Deverell in his report. By letter dated 16 August, 2019 we sought Mr Magnus' expert opinion in relation to certain specific questions accordingly. Annexed hereto and marked "S" is a copy of said letter and email attaching same to Mr Magnus of even date (Please note that the other attachments referred to in this email have been attached previously in this correspondence).
26. Mr Magnus responded to the abovementioned letter by way of email on 19 August, 2019 whereby he provided his responses to the questions raised in blue. Attached hereto and marked "T" is a copy of this email and attached correspondence with his responses in blue. I won't attempt to summarise Mr Magnus' responses as they speak for themselves and make clear the glaring omissions and failures of Mr Deverell, thus giving credence to the matters raised in this correspondence.
27. On 21 August, 2019 rather than approaching our agent (the Council) for the purposes of forwarding information to Mr Deverell (our first appointed Building Surveyor), my Son instead wrote to Mr Deverell directly providing him with a copy of all the aforementioned material from Mr Magnus as well as seeking responses to specific questions, including amongst other things, the evidence upon which he sought to rely in making the factually inaccurate statement in his report regarding the "...installation of the fire hose reels and use of the fire hydrant plugs located on site...[being] a requirement of the Planning Permit for the caravan park prior to being owned by the Gilmour's (sic)". A copy of this letter of 21 August, 2019 together with covering email of even date and all attachments to same are attached hereto and marked "U".
28. Mr Deverell completely ignored the aforementioned email, letter and attachments, never made any attempt to rectify his report and never made payment to us of the \$1,050.00 we incurred with Braddon Building Surveyors as per our demand. We have not heard from him since.
29. Simultaneous to the letter to Mr Deverell noted above, my Son wrote to both Mr Crawford and Mr Gould of the Council on 21 August, 2019 in order to:

- (a) Address the fact they never bothered to respond to our letter of 6 August, 2019 which specifically required an explanation as to how and why they had provided TasWater with a copy of Mr Deverell's report (note our letter had requested a response within 7 days which had long since passed);
- (b) Provide them with a copy of Mr Magnus' report;
- (c) Provide them with a copy of our questions and Mr Magnus' answers in relation to his report to evidence what we had been telling them for several months; and
- (d) Demanding that the council reimburse us for the \$1,050.00 we had to incur to engage Mr Magnus.

A copy of the email of 21 August, 2019 together with our letter of even date is attached hereto and marked "V" (Please note: I did not include any other attachments referred to in this email as they have been provided previously in this correspondence).

30. On 28 August, 2019 we received an email from Mr Gould purporting to address the issues raised in our letter of 6 August, 2019 and 21 August, 2019. Attached hereto and marked "W" is a copy of said email. I pause to note that Mr Crawford for and on behalf of the Council justifies the release of Mr Deverell's report to TasWater on the following grounds:

- (a) That because Council *"commissioned and paid for the report"* it is *"Council Property"*;
- (b) That the Report from Mr Deverell was provided simultaneously to us and TasWater as it was *"information that both parties sought for dispute resolution"*;
- (c) Council say that *"...it does not require, nor will it seek, your approval to release this information"*; and
- (d) A suggestion that Council somehow had agreed to help *"facilitate and advocate for a mutually agreeable outcome"*.

The ignorance of the aforementioned statements are obvious, but for the avoidance of doubt:

- (i) The creation of a report in accordance with both the law of Agency and ss28 & 29 of the *Building Act 2016* does not cause for the report to become the property of the Council;
- (ii) The mere exchange of money for a Report does not create 'property' in the Report for the Council;
- (iii) The law of agency does not permit the person who paid for the report to release the report without clear and express authority from their Principal (my wife and I);

- (iv) TasWater is not a party to the Agreement between the Council and my wife and I surrounding the provision of the report from Mr Deverell. It is thus not a tripartite agreement of any sort. There was (and remains) no lawful obligation on the Council to release the report to TasWater and neither did we consent to same.
 - (v) The information contained in the report from Mr Deverell at its most basic level is private in nature and thus there was never an obligation on (or lawful right for) the Council to release any such information to TasWater in these circumstance or **any** circumstances.
 - (vi) The only benefit to the Council in releasing to report against the backdrop of all of the above was that it served to benefit them in covering up their historical wrongdoing which they were aware of. The use of the phrases *"information that both parties sought for dispute resolution"* and *"facilitate and advocate for a mutually agreeable outcome"* raises some significant questions regarding their actions.
31. We have not heard anything from any employee of the Council or Mr Deverell since this time.
32. Having reached another apparent dead end, we took it upon ourselves to contact TasFire to get to the bottom of what their position is with respect to this matter. This was deemed appropriate as the email response from Mr Whiteway of TasFire at first instance dated 13 March, 2019 (see attachment 'C' herein) was provided directly to Mr Deverell (which raises concerns immediately insofar as his brief) and at no point did he visit our Property to inspect the site which he is required to do if he wishes to stand behind the assertion that a "non-standard system" not required by law is necessary. To this end I refer you above to the comment from Mr Magnus regarding not accepting TasFire's initial advice pursuant to s132(3) of the *Building Act 2016* (see attachment "T" herein).
33. Contacting TasFire was a worthwhile exercise. Firstly, the manager of Building Safety for TasFire, Mr Andrew McGuinness was quick to respond by way of telephone and straight away noted that he *"could see the exact situation we were in"* which *"clearly wasn't fair"*. He went on to indicate that the actions of TasWater in charging small businesses for these types of large scale infrastructure that are not required by law is a matter of significant concern to TasFire such that they are in the process of preparing a submission to the Economic Regulator regarding such issues. Sympathising with our position, Mr McGuinness agreed to promptly travel from Hobart to meet with us on site on 4 March, 2020.
34. On 4 March, 2020 we met on site and my Son and I walked our Property with Mr McGuinness so that he could inspect the layout of our Property, the location of fire plugs and the way in which water through the 100mm main entered and exited our Property. After taking some measurements, he immediately indicated that he would have no issue having an already existing fire plug a few metres outside the entrance of our Property on the Eastern end reinstated (if it wasn't already active) and installing a

fire plug a few metres outside our Property on the Western end. Attached hereto and marked "X" is a copy of the email Mr McGuinness sent us attaching the letter to TasWater dated 6 April, 2020.

35. What occurred with Mr McGuinness ought be given particular weight in relation to resolving this matter for the following reasons:

- (a) As you are now well aware, the charges rendered by TasWater are only due to what they perceive to be their legal right as a result of the existence of a 100mm meter on our Property.
- (b) The 100mm meter was placed on our Property initially without any consent from us and in contravention of the resolution of Council themselves as per their minutes from 17 November, 2003;
- (c) When TasWater took legal control of water and sewerage infrastructure in this state, it was (and remains) pursuant to the *Water and Sewerage Corporation Act 2012*. I draw your attention to ss28 and 30 therein which provides for the vesting of assets, rights and liabilities to be transferred by force of law from Transferor to the Transferee. TasWater cannot therefore wipe their hands of historical unlawful decisions of their forbearers;
- (d) At no point has the 100mm fire main been a requirement for any development on our Property. If you don't believe us, ask TasWater, Mr Deverell and the Council for proof. We asked for same throughout our correspondence to their office (which you have in our first folder) and they have never been forthcoming. Proceeding to an Investigation under the *Ombudsman Act 1978* will no doubt raise the skeletons TasWater, the Council and Mr Deverell do not wish for you to see with respect to such lies being held out to be 'facts'.
- (e) There is no requirement as a matter of law (National Construction Code, *Building Act 2016* etc) for a 100mm fire main to be on our property at first instance.
- (f) TasFire are a reporting authority. Nothing more, nothing less. They are required to be consulted, but their opinion holds the weight of an 'opinion' not that of a decision maker. It does not have force of law (see s132 of the *Building Act 2016* and comments of Mr Magnus in relation to same in attachment "T" herein).
- (g) Nothing has changed regarding our Property to alter this position since the 100mm meter was unlawfully placed on our Property in 2004. As such, the position of Mr McGuinness must hold true both now and historically.

With the above stated, on what lawful basis can your office or TasWater possibly suggest they have a lawful right to charge for the fixed costs associated with a 100mm main in this circumstance? To argue same would be to give credence to an unlawful act and ignore the legislation surrounding this issue.

Summary

I apologise for the lengthy nature of this correspondence, but as I hope you can appreciate from reading and digesting the above, what is on paper a very simple matter that ought to be summed up in a page or two, has become drawn out due to failings by Mr Deverell as a Building Surveyor and the Council in failing to understand the law of contract, agency, privacy legislation and their own privacy policy (or worse, a desire to cover up their historical wrongdoing in a conscious disregard for the law). To top it off, you then have TasWater whose legal department is headed by Mr Jeremy Morse, an individual that holds a corporate legal practising certificate (although has conceded verbally to my Son he has never practised law) has no understanding of the law of agency, litigation privilege, the *Building Act 2016* nor any of the legislative provisions referred to by Mr Magnus in his report.

With the above chain of correspondence laid out so that you can see the way in which everything unfolded surrounding us, the Council, Mr Deverell and Mr Magnus and for the avoidance of any doubt, you can summarise the position as follows:

- A. The Council contracted with us both verbally and in writing (by virtue of the chain of correspondence to and fro) to act as our agent to engage a Building Surveyor to provide us with a report for the legal need for the 100mm fire main on the Property. The agreement was for nothing more and nothing less.
- B. The act of 'goodwill' referred to by Mr Crawford in his final email of 28 August, 2019 came about simply due to the fact they were aware they created this problem by virtue of placing the 100mm fire main on the Property in breach of the resolutions of Council themselves from their meeting on 17 November, 2003. As to this, there is no dispute as this is conceded by Council in their letter to us dated 5 July, 2019 (See attachment "P" above").
- C. Council were at all times acting as our agent in engaging Mr Deverell to provide a report on the legal requirement to have the 100mm fire main in place. The legal basis for the existence of an agency agreement is not open to question for the following reasons:
 - (a) The written and verbal agreement surrounding same as evidenced above;
 - (b) The concession by Mr Gould of the Council in his email of 18 July, 2019 that Council were our "*Commissioning Agent*" (see attachment "N" above);
 - (c) Section 28 and 29 of the *Building Act 2016* ("the Act") which addresses this issue, namely:
 - (i) A building surveyor is a building services provider who is engaged by the owner of premises to perform or exercise, in respect of the premises, the functions or powers of a building surveyor under this Act (s28(1) of the Act); and
 - (ii) A person must not perform any of the functions, or exercise any of the powers, of a building surveyor under this Act in respect of work unless he or she is engaged, by the owner of premises where the work is being

performed, to perform the functions, or exercise the powers, of a building surveyor in respect of the work (s29(1)(a) of the Act).

The policy basis behind keeping contracts between a building surveyor and the owner of a premise is legally sound. This matter could be used as a case study of what can occur when such a relationship is not respected.

(d) It is also worth noting the specific provisions precluding a building surveyor from acting in any matter where that person has a "*potential conflict of interest between his or her functions as a building surveyor and his or her personal or business interests*" (s28(2)(1) of the Act). Being engaged by a Council (which is what the Council argue and apparently what Mr Deverell agrees with), asserting inaccurate information as a fact (outright lies if we are honest), providing a report that suits the Council's objectives by conveniently ignoring reference to the National Construction Code and legislation, ignoring the issues raised by the owner of the land over which the report is based, refusing to take instructions from the owner of the premises, failing to address significant professional and legal concerns raised by Mr Magnus and providing a report that just so happens to suit the Council's interests who coincidentally see it as their duty to immediately provide this to TasWater. I don't believe there is any need to say anything further other than the features of a 'potential conflict of interest' are alive and well in this matter.

D. Council breached the agency agreement (and probably many of their internal policies too - Code of Conduct etc) by failing to follow the instructions of their Principal (my wife and I) with respect to Mr Deverell's engagement.

E. By Council failing to:

- (i) Obtain our consent to release Mr Deverell's report to a 3rd party;
- (ii) Acknowledge and comply with common law principles of litigation privilege surrounding the provision of Mr Deverell's report; and
- (iii) Failure to make good their wrongdoing by informing TasWater of their error in releasing Mr Deverell's report to them and apologise for their actions

They have breached the *Privacy Act 1988*, their Privacy Policy (see attachment "O" referred to above) the *Local Government Act 1993* (see ss339, 345 if indeed Mr Deverell obtained the false and misleading information in his report from the Council themselves) and I am sure you are aware of other relevant pieces of legislation and provisions that would apply.

F. By TasWater continuing to assert some reliance on the report from Mr Deverell, they:

- (a) Are ignoring the multitude of issues noted above all soundly based in fact and law which surround both the contents of the report and the way in which the report came into their possession; and

- (b) Are choosing to ignore the fact that that the report was prepared in contemplation of litigation, not for the benefit of anyone other than the land owners (my wife and I) yet still refuse to comply with the law despite holding a 'model litigant' status.

G. You have an opinion from Mr McGuinness of TasFire which satisfied all parties, which holds true both now and historically as a matter of law due to the fact that the Property has not materially changed since we took ownership of same.

Hopefully, you now have a better idea of what has occurred in this matter. To be clear, the historical charges sought by TasWater relate solely to the existence of the 100mm water meter, (not the pipeline itself) on our Property. The mere fact that water flows through the 100mm pipeline under our Property does not afford them the right to render any fixed charges for same. That is to say, a mere easement (whether registered on title or not) does not afford TasWater the right to lay charges for same. It is a fixed infrastructure charge as to which they and us are concerned. It is the fixed infrastructure of the meter itself that creates the necessary nexus to invoke the legislative customer contract between TasWater and the person who owns the relevant property. Necessarily, to create such a customer contract must be based soundly in fact and law. If it were viewed any other way, then TasWater could dig up all residential 20mm meters in Tasmania, replace them with large scale factory specification 100mm meters (as they have done to us) and commence charging all Tasmanian home owners \$8,000.00 or more dollars per annum in lieu of \$800.00 per annum (or thereabouts charged for a 20mm meter or equivalent) in complete disregard for the lawful and factual basis for same.

The moving of this 100mm meter from our Property in accordance with the position put forward by Mr McGuinness on behalf of TasFire would provide TasWater with no ability to charge for this connection. Hence, such large scale meters are only ever installed on properties when they are required by law for the operation of such businesses (for example large factories where such connections are required for firefighting purposes or otherwise where there they are involved in water intense operations).

In circumstances where the 100mm meter was never wanted, nor required by law, nor required by TasFire and in circumstances where it should never have been placed on our Property at first instance, there is no lawful ability to charge for same. To suggest otherwise would be to award or unjustly enrich a party as a result of their own unlawful act. It is trite, but a legally binding contract cannot be created where the contract itself is created by means of misconduct or an unlawful act(s). The moral issues regarding what has occurred here go without saying.

The outcome we seek in respect to the 100mm meter is for TasWater to acknowledge same and:

- (a) Remove all historical charges associated with this 100mm meter;
- (b) Remove the 100mm meter from our Property or alternatively leave it in place but agree to cease rendering charges for same both now and into the future; and
- (c) That TasWater at its expense comply with the alternative proposition put forward by Mr McGuinness in his letter of 6 April, 2020

That the above be formalised by way of a Deed or a suitable alternative put forward by your office to protect us both now and into the future.

RESPONSE TO MATTERS RAISED IN YOUR LETTER OF 12 MAY, 2020

Hopefully, many of the issues you had concerns around have been answered by the above insofar as the 100mm main is concerned. That said, I will attempt to distil the matters contained within your aforementioned letter and address same in further detail.

1. *TasWater states that the 100mm connction has been present at the property since the time of your purchase and it is legally entitled to charge you for that connection.*

The water connection charges are established by the Economic Regulator by virtue of the existence of the relevant meter on the relevant property. In this instance we have two meters:

- (a) A 32mm (or equivalent); and
- (b) A 100mm meter.

The 32mm meter (or equivalent) has always been on the property and we have never had an issue with respect to charges rendered for same.

The 100mm meter was placed on our Property without our consent, knowledge, contrary to the resolution of Council in their meeting on 17 November, 2003, contrary to law et cetera in the year 2004. Charges were never attempted to be rendered for this meter whilst Council was the water authority (in recognition for how it ended up there in the first place). Charges have only been attempted to be rendered for this meter since the water authority moved to Cradle Mountain Water and later, TasWater.

This distinction regarding how charges are levied is the starting point to appreciating why TasWater cannot levy charges associated with this 100mm main at first instance.

2. *TasWater say that they have told us both now and historically (since 2012) that we need a report from a building surveyor in order to downsize or remove the connection.*

The question has never been one of needing for the pipeline to be removed or downsized. The dispute has always been surrounding the 100mm meter that **caused for charges to be rendered for same** in circumstances where the pipeline itself is a piece of public infrastructure that just so happens to run under our Property. The fact you have Mr McGuinness wishing to keep water running through same to remain a piece of public infrastructure by **only** maintaining two fire plugs (both of which being **outside of our Property**) speaks for itself! By implication, TasFire have acknowledged that they have no lawful ability to insist on the maintenance of any serviceable fire plugs on our Property which is the exact point we have been repeating to TasWater from day one and later with the assistance of Mr Magnus.

To demand that a customer must spend money engaging an expert to advise the supplier (TasWater) of both the law and the historical oversights of their forbearers (of which they have assumed responsibility and liability for by way of legislation) in placing the 100mm meter on our Property in 2004 not only holds no weight as a matter of law, but is a clear act

of an oppressive and/or improperly discriminatory practice which just so happens to fall neatly into s28(1)(c) of the *Ombudsman Act 1978* of which you must have regard during an Investigation.

The only reason we spent the money on Mr Magnus is because of the failings noted above regarding Council and Mr Deverell which have only served to complicate this matter through no fault of our own. We have of course suffered damages as a result.

If you are still unable to appreciate the above, how do you suggest that we were lawfully required (as the customer) to establish to TasWater all of the above and how do you suggest it would have rendered a different outcome given all necessary documentation is now to hand and TasWater still wish to argue the matter? To this end, I refer you generally to the provisions of s28(1) of the *Ombudsman Act 1978*.

3. *The Report from Braddon Building Surveying dated 19 August, 2019 only addresses the National Construction Code and not the issue of downsizing/removing the connection.*

I make the following points:

- (a) Again, at the risk of repeating myself, the above proposition misunderstands the matter at hand. The question is not whether the 100mm pipeline under our property needs to be removed or downsized, but rather, whether charges can be lawfully levied for the supply of water through same.
- (b) It is the meter that creates the nexus for TasWater to levy fixed charges and a meter is not required unless there is a lawful need to access the water flowing through a connection (in this case a 100mm pipeline).
- (c) The National Construction Code in combination with the *Building Act 2016* is what a building surveyor is required to consider when determining what the appropriate water connection is for both supplying water to a property and to comply with the relevant fire requirements. It is the type of investigation required if someone was setting up a commercial operation from scratch, and thus is not only the correct way in which to deal with this matter, but is the only lawful way in which look into the matter.
- (d) Mr Magnus correctly interpreted both the Code and the *Building Act 2016* and explained why we **do not require** a 100mm meter or connection, nor any special firefighting equipment associated with such a connection.
- (e) As pointed out by both us and Mr Magnus, TasFire are a reporting authority under the *Building Act 2016* and thus are required to be consulted by a building surveyor but the feedback they give is an opinion to be considered but has no force of law by legislation (see ss129-132 of the *Building Act 2016* and the comments from Mr Magnus in attachment 'T' herein).
- (f) Mr McGuinness appreciates the position insofar as there being no lawful requirement to have a 100mm connection or meter servicing our Property. Hence he has put forward his alternative position which is to reconnect the fire plug just outside the

entrance of our Property (eastern end) and establish a fire plug outside our Property on the opposite end (western end). In this circumstance the 100mm pipeline remains running under our Property as an easement and we have no issue with that.

In light of the above, you ought to then turn to the actual question to be answered in this dispute. That is, on what lawful or proper basis (or any basis for that matter) can TasWater say that we ought to be gouged (both historically, now and into the future) for the water that runs under our Property for which we derive no benefit, nor require as a matter of law where TasFire themselves are in agreeance that the pipeline need only be kept as piece of public infrastructure with access points to same outside our Property?

4. TasWater considers that the advice from TasFire that it would not support the removal of the 100mm connection prevents it from taking any action to downsize or remove the connection at this time.

Again, you need to appreciate that the question at hand is not the removal or downsizing of the 100mm underground pipeline. The pipeline itself is a mere easement no different to a 'right of way' which in turn creates no lawful ability to render charges for same. It is the placement of the 100mm meter on our Property that has caused TasWater to levy fixed charges in this instance. Whether the pipeline is removed or remains, we are ultimately careless. Our issue is with respect to the lawful basis for charging us for this connection. That is a question of both fact and law.

I refer you to the starting point of this dispute which is the unlawful placement of the 100mm meter on our Property in 2004 in contravention of all the resolutions from the Council Meeting on 17 November, 2003. The 100mm pipeline itself runs under our Property and **existed long before the meter was put in place in 2004** and thus was a mere easement on title (as it remains to this day) as piece of public infrastructure. You have now been provided with all necessary evidence to establish this fact beyond any reasonable doubt.

You have been provided with all evidence necessary to establish beyond any reasonable doubt that our Property does not require access to the 100mm pipeline as a matter of law. During our ownership, we have not derived any benefit from the 100mm connection and we have maintained from 2004 to date that we do not want the 100mm meter on our Property nor access to the 100mm pipeline. It has always been a piece of public infrastructure which is exactly what TasFire wish to maintain with the fire plugs outside our Property. That is, they simply want the water to flow through the pipeline under our Property as a continuing easement.

Finally, for completeness, I refer to my comments stated under '3' above.

Ultimately, the position of TasWater on this point is misconceived as they appear to have lost sight of the matters in dispute. That said, as an aside, it would be interesting to see how TasWater would answer the question: *"referring to legislation, case law or otherwise, on what legal basis do you assert that the opinion of TasFire determines this matter?"*

5. TasWater acknowledges some delay but states that this is largely due to efforts to negotiate with you prior to commencing debt recovery action.

This is quite shocking. How does TasWater suggest they have acted in accordance with their Customer Charter when we have done everything to bring this matter to a head which would not have been possible without the legal advice provided by our Son. They have ignored the wrongdoing of their forbearers (to which they have assumed responsibility and liability), they never once offered to pay for a building surveyor to get to the bottom of this matter, they made no attempt to contact TasFire (yet ironically now wish to rely upon them), their head lawyer, Mr Jeremy Morse has refused to attend our Property to see what is occurring in circumstances where this failure has lead to him being misguided throughout this matter and we were misled by their office surrounding this issue for some 7 years before our Son was able to bring this matter to a head.

How do these circumstances allow you draw a conclusion that TasWater have acted 'reasonably' ? This is particularly pertinent when you keep in mind that TasWater are a monopolistic organisation with model litigant status at law.

6. You appreciate that we disagree with the stance taken by TasWater but it does not appear to you to be contrary to law, based on mistake of fact, irrelevant considerations or otherwise unreasonable, unjust, oppressive or improperly discriminatory?

Your references in this instance are clearly in consideration of s28(1) of the *Ombudsman Act 1978*. These matters have all been answered in this correspondence and my previous correspondence. Suffice to say, the actions of TasWater are all of the above. It is worth perhaps considering the following:

- (a) Does the above conclusion sit soundly with TasWater relying on an unlawful act of the forbearers regarding the dumping of the 100mm meter on our Property?
- (b) Does the above conclusion sit soundly when faced with the position put forward by Mr Magnus and ourselves regarding the application of the National Construction Code and the *Building Act 2016*, and more specifically, that there is no lawful requirement for our Property to be serviced by the 100mm connection?
- (c) Does the above conclusion sit soundly with the fact that TasWater have lied in telling you that historically building applications on our Property required the 100mm connection?
- (d) Does the above conclusion sit soundly with TasWater being unlawfully provided with the report from Mr Deverell and then continuing to rely upon same in circumstances where not only does it not address the law but was provided in contravention of the law of agency and litigation privilege to which they have been advised on numerous occasions and which is now set out in detail for you.
- (e) Does the above conclusion sit soundly with the fact that TasWater have put all expenses associated with this dispute entirely on our shoulders as the customer notwithstanding all of their historical wrongdoing?

- (f) Does the above conclusion sit soundly with the fact that TasFire is a reporting authority and thus their opinion has no force of law yet is being espoused by them to you as if it is?
- (g) Does the above conclusion sit soundly with the fact that TasWater have failed to consider the fact that TasFire themselves do not require any fire plugs on the Property moving forward and are happy with the alternative of having fire plugs outside the Property?
- (h) Does the above sit soundly when you view the many ways in which TasWater have attempted to recreate their position as a moving feast over the last 18 months when presented with further evidence against their position at each step along the way? For example, espousing reliance on the *Fire Services Act 1979* and *General Fire Regulations 2010* as somehow impacting us to our detriment in this matter despite not particularising upon which sections they rely and then refusing to advance the argument by way of particularising same when questioned? (see letter from TasWater dated 17 May, 2019 and my Son's response of 7 June, 2019 as previously provided to you for such an example).
- (i) Does the above sit soundly with the fact that in TasWater in maintaining their position are seeking payment from a small business operator to the tune of between \$8,000.00 - \$10,000.00 per annum for a connection that runs under our property which we are not required by law to have, nor do we derive a benefit from and in circumstances where TasFire themselves recognise that the costs associated with the 100mm meter are 'cost prohibitive' and only wish to maintain it as a public infrastructure (see letter from Mr McGuinness of 6 April, 2020)?
- (j) Does the above conclusion sit soundly with the fact that notwithstanding all the individual matters associated with our Property as outlined to you which cause for the weight of law to fall on our side, TasFire themselves are making a representation more generally to the Economic Regulator surrounding such charges?
- (k) Does the above conclusion sit soundly with the fact that TasWater has not made any contact with us as a result of the correspondence from Mr McGuinness dated 6 April, 2020 nor appear to have offered your office a proposed resolution to this matter regarding both historical and future charges levied?
- (l) And so on and so forth

Is this the type of behaviour that our Ombudsman condones as being above board and being in compliance with the various factors embraced in s28(1) of the *Ombudsman Act 1978*?

7. *TasWater has indicated that it would support the position of TasFire as espoused in Mr McGuinness' letter of 6 April, 2020.*

This is great news, but the fact we have had no communication from their office regarding this and they have made no indication to you as to how they propose to implement it and what they intend to do about the historical charges they are seeking, means that we seek your

continued input surrounding this issue. The solution we seek with the assistance of your office in consideration of the above is:

- (a) TasWater remove all historical charges associated with this 100mm meter;
- (b) TasWater Remove the 100mm meter from our Property, or alternatively, if they do not wish to incur this cost, they can leave it in situ but agree to cease rendering charges for same both now and into the future; and
- (c) TasWater at its expense comply with the alternative proposition put forward by Mr McGuinness in his letter of 6 April, 2020.

That the above be formalised by way of a Deed or a suitable alternative put forward by your office to protect us legally both now and into the future.

8. *That when it comes to the ET charges rendered, they comply with PSP3 and you believe they are appropriate and in accordance with same*

I have gone into this in detail previously, but to come to this conclusion you need to first consider, and reject the following:

- (a) An ET is a measure of the load a property places on the sewerage system whereby one ET is considered to be the annual sewerage discharge from a single residential dwelling under dry weather flows which is set by PSP3 at one ET being 200kL per annum (see PSP3 at p284).
- (b) That by definition an ET will not hold true when a leak occurs and the water fails to enter the sewerage system as a result of same.
- (c) That TasWater are aware that we have suffered leaks on our Property as a result of burst underground pipes (to the point that last year they agreed to read our meter on a monthly basis to help identify same) that do not show themselves for significant periods of time as a result of our Property being on the beach and the sand preventing any 'bubbling type' leaks occurring.
- (d) That TasWater are already benefitting from our misfortune by charging us for excess water usage for the leaked water.
- (e) That to increase our sewerage charges in circumstances where water has not entered the sewerage system unjustly enriches TasWater and is contrary to what an ET is designed to measure.
- (f) That the list of categories with associated charging for ETs (eg caravan parks) is not exhaustive and TasWater have the "ability to assess the number of ETs on a case by case basis if the circumstances warrant it". (see 9.7.3 of PSP3);

The above are of course **facts**. The question both yourself and TasWater must ask is, why do the circumstances above not warrant the assessment of ETs on a case by case basis? If your conclusion is in the negative, then what circumstances would 'warrant it' given PSP3 provides for same?

Not only does the PSP3 allow for the assessment of ETs in such circumstances to be assessed on case by case basis, but they even provide at AS01 of PSP3 the ability to charge for 0.45ETs per self-contained cabin and 0.5 ETs per toilet/shower. To this end I direct you to our comments on this point provided to TasWater complete with calculations in our letter to Mr Jeremy Morse of 13 September, 2019 (see page 13 therein). How do TasWater and your office say this alternative method ought not apply in these unusual circumstances whereby we are facing thousands of dollars of charges relating to leaked water through no fault of our own that never entered the sewerage system and in circumstances where the issue was rectified as soon as we came into this knowledge?

9. That you have made preliminary enquiries under s20A of the Ombudsman Act 1978 and are of the opinion (albeit a preliminary one) that an investigation would be unnecessary or unjustifiable under s21(1)(d) of same.

I note that you have not yet made a final determination as to whether this matter ought to progress to an Investigation. You have made preliminary enquiries under s20A to ascertain whether our complaint should be Investigated, but in doing so, have (amongst other things) been provided with errors of both fact and law by TasWater, were missing the chain of communications and history surrounding us, the Council, Mr Deverell and Mr Magnus and in turn were unable to properly assess the impact of Mr McGuinness' letter of 6 April, 2020 in light of both fact and law. This material has now been provided in full.

Whilst I trust what is contained within this correspondence has established sufficient information to commence an Investigation, I do wish to point out that I noticed in your letter to me that you made extensive reference to the terminology found in s28(1). Whilst I accept you may generally consider such aspects whilst making preliminary enquiries, making adverse findings against our complaint in accordance with the matters outlined in s28(1) is not open to your office until an 'Investigation' has formally commenced by way of definition.

The end result, as you have pointed out, is that s21(1) is the determinative provision insofar as whether our complaint proceeds to an investigation. I submit that based on all the evidence you now have before you, our complaint does not infringe s21(1) so as to give rise to the ability to issue a Notice of Refusal under s22.

In turning to consider s21(1) in detail, I note that you appear to accept at first instance accepted that we do not infringe the first three limbs of s21(1), but that you may need some convincing with respect to the fourth limb therein. That is, whether the matters raised in the complaint are 'unnecessary' or 'unjustifiable'. To dismiss a matter without proceeding to an Investigation is akin to a summary judgment before a Court or Tribunal. Moreover, the terminology used in s21(1) reflects a clear legislative intent to create the same type of test. The threshold to making a summary determination and thus denying a party their right to have their case (or complaint) properly tested is necessarily high. Some of the more commonly referenced statements of law surrounding the making of such decisions are as follows:

- *"The power to order summary judgment is one that should be exercised with great care and should never be exercised unless it is clear that there is no other question to be tried": Fancourt v Mercantile Credits Ltd [1983] HCA 25; (1983) 154 CLR 87.*

- “The court should refuse to enter summary judgment unless it is absolutely clear there is no case to be tried”: *Martin v NRMA Insurance Ltd* [2000] FCA 773.
- “Where there are factual issues capable of being disputed and in dispute, summary judgment should not be awarded to the respondent simply because the court has formed the view that the applicant is unlikely to succeed on the factual issue”: *Spencer v Commonwealth of Australia* [2010] HCA 28 at [24].
- “A judge should not make an order for summary judgment unless fully dissuaded that there is no real question to be tried, that is, that there are no facts shown such as would lead to an inference that at a trial of the action the defendant might be able to establish a defence to the plaintiff’s claim. A complete defence does not have to be shown”: *Port v Alexopolous (No 2)* [2011] TASSC 37.

To come to the conclusion that the matters raised in the complaint before you are ‘unnecessary’ and/or ‘unjustifiable’ in order to activate the powers of s21(1) cannot be justified by way of fact and/or law in the circumstances which you have now been presented.

Referring back to your preliminary consideration of the factors from s28(1) referred to in page 2 of your correspondence, I submit that you can now **no longer** be entertaining a *prima facie* position that TasWater have:

- Acted according to law;
- Acted reasonably in all of the circumstances;
- Acted and continued to act on anything other than mistakes of both fact and law;
- Acted reasonably;
- Acted without being oppressive;
- Acted justly; and
- Acted improperly.

Conclusion

The position with respect to a resolution regarding the historical and future charges surrounding the 100mm meter is as set out above.

Without any admission of liability and purely as a gesture of goodwill to resolve this matter at this specific juncture and on sensible commercial terms, we will agree to pay any currently outstanding excess water charges on the basis that TasWater:

- Agrees to resolve the dispute regarding historical and future charges for the 100mm meter in accordance with the above;
- Commencing from 1 July, 2012 to date, agree to assess ETs for the property on a case by case basis in accordance with PSP3 at the agreed rate of 8.0 ETs;
- That they reasonably advise us of the amount of each associated amended quarterly charge relating to 8.0ETs; and
- That they provide us with reasonable evidence of the amounts they have received from us with respect to ET charges rendered during this period;

Once the above has occurred, we will pay both the excess water charges and any amounts owing with respect to ET charges for this period (after deducting amounts paid with respect to ETs during this period from the recalculated amounts at the agreed rate of 8.0 ETs). Such payment will be made within **sixty (60) days** of compliance with all of the above provisions.

In the circumstances, I suggest that the above is not only the correct legal outcome, but is morally and ethically appropriate in light of the full circumstances of this matter.

I sincerely hope you will assist us, which first starts by proceeding to an Investigation. Ultimately the stress of being bullied by TasWater in this dispute as they take no heed of the law at each turn is sending my wife and I into an early grave. We have been nothing but reasonable small business operators and I am hopeful that you will assist us by taking back some of the power imbalance in order to derive the correct legal and fair outcome in this matter.

If you have any questions at all, I am happy to address them in further detail either verbally or in writing.

I look forward to hearing from you.

Regards,

Graeme Gilmour

A

Tomorrow's Meeting - G & C Gilmour - 30b Old Bass Highway, Wynyard "Beach Retreat Tourist Park"

Ryan Gilmour <ryan_gilmour@hotmail.com>

Thu 7/02/2019 1:44 PM

To: pwest@devonport.tas.gov.au <pwest@devonport.tas.gov.au>; scrawford@warwyn.tas.gov.au <scrawford@warwyn.tas.gov.au>

📎 2 attachments (4 MB)

Taswater Letter to General Managers of Council 28.1.19 (3).pdf; 2003_M16_Minutes_17_November1 (1).pdf;

Dear Mr West and Mr Crawford,

I attach the following:

1. A summary of the issues I wish to discuss with you tomorrow from a historical perspective to date; and
2. Minutes from Waratah-Wynyard Council Meeting on 17 November 2003.

Regards,
Graeme Gilmour

The General Manager
Waratah Wynyard Council
Attention: **Shane Crawford**
By email only: scrawford@warwyn.tas.gov.au

General Manager
Devonport Council
Attention: **Paul West**
By email only: pwest@devonport.tas.gov.au

Dear Sirs,

Taswater Dispute – 30b Old Bass Highway, Wynyard

I refer to our upcoming scheduled meeting due to take place at my property, 30b Old Bass Highway, Wynyard, "Beach Retreat Tourist Park" on 8 February 2019 at 8am.

In preparation for the above, I take this opportunity to provide a summary of the issue at hand from its beginning through to the date of this correspondence as I appreciate that this issue has had a lengthy history:

1. Prior to my ownership of the Caravan Park, the site was a Crown Lease with the Park being operated by the then Wynyard Council.
2. The Wynyard Council (as it then was) leased the Caravan Park to a private operator in 1993. That operator was Mr Rod Walker.
3. Council has had a rising sewer main located in the Caravan Park since approximately 1960.
4. In July 1998 the now Waratah/Wynyard Council agreed to the sale of the Caravan Park and the conversion of the land to 'freehold' ownership.
5. In September 1998 my wife and I purchased the Caravan Park.
6. At the time of purchase and to date, the park is serviced by a 32mm pipe/meter.
7. In June 2001 a planning permit was issued requiring a proposed dwelling to be constructed and was to be clear of the Council's mains.
8. On 6 November 2003 the Waratah-Wynyard Council tabled an Agenda for their 17 November 2003 meeting which included a recommendation that the Council:
 - (a) Determine to budget for the relocation of the sewer rising main and water main from within PID 7164067 in the 2004/2005 financial years budget. It was suggested that the cheapest way the Council could deal with the issue was to install a 100mm meter.
 - (b) Request that the owners of the property to **formally agree** (emphasis added) that they are prepared to accept ownership and future responsibility for the 100mm water main within the property once the work is completed .

9. On 17 November 2003 the Waratah-Wynyard Council held its meeting whereby it was resolved that the Council:
 - (a) Determine to budget for the relocation of the sewer rising main and water main within PID 7164067 in the 2004/2005 financial years budget; and
 - (b) Request the owners of the property to formally agree that they are prepared to accept ownership and future responsibility for the 100mm water main within the property once the work is completed (please see *928.5 Sewer Rising Main – Wynyard Caravan Park from Council Minutes of 17 November 2003 as attached*).
10. Despite resolving to attend to the above, the Council never requested we agree in any manner whatsoever as to taking responsibility for the 100mm water main/meter within the property. We only became aware of these minutes whilst undertaking research in preparation for discussing this matter with you on 8 February 2019.
11. At no time whilst water was managed by the Waratah Wynyard Council were we ever charged for the 100mm water meter/main which reflects:
 - (a) The fact that we never agreed for the 100mm water meter to be placed on our property whereupon it was installed in or around 2004 without providing us any prior notice or even informing us they would be entering our property to undertake this task;
 - (b) That we never agreed (formally or otherwise) to accept ownership and future responsibility for the 100mm meter; and
 - (c) That we did not require such a large water main/meter to operate our small caravan park business.
 - (d) That the main/meter was installed for Council's convenience and for future Council Savings.
12. Since Cradle Mountain Water/TasWater came into existence we have been continually fighting as to the necessity for the 100mm meter.
13. For reasons unclear to me, Cradle Mountain Water/TasWater have failed to acknowledge the chain of events which were outside of my control that lead to the 100mm main being placed on our property despite the fact that both back in 2003 and now, we do not require the 100mm water meter they wish to charge us for. The result being, they are looking to be provided with further evidence to support our position in order to maintain the status quo back when the Council were in charge of water infrastructure namely charging for the 32mm meter only.

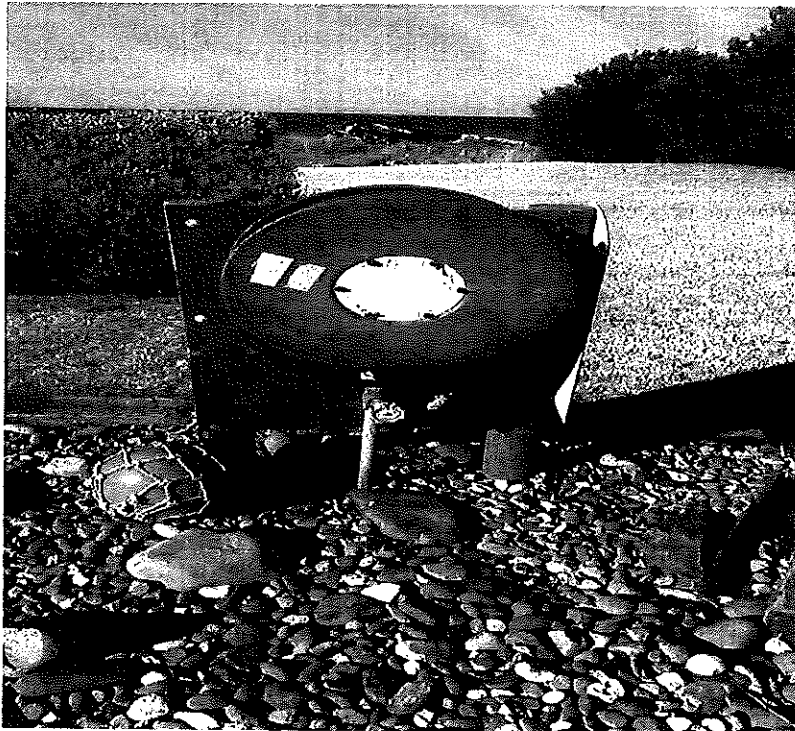
I now take the opportunity to outline the layout of our property and why the 100mm meter was no doubt installed back in 2004:

- a) As noted above, the property was originally Crown land and operated by the Council.

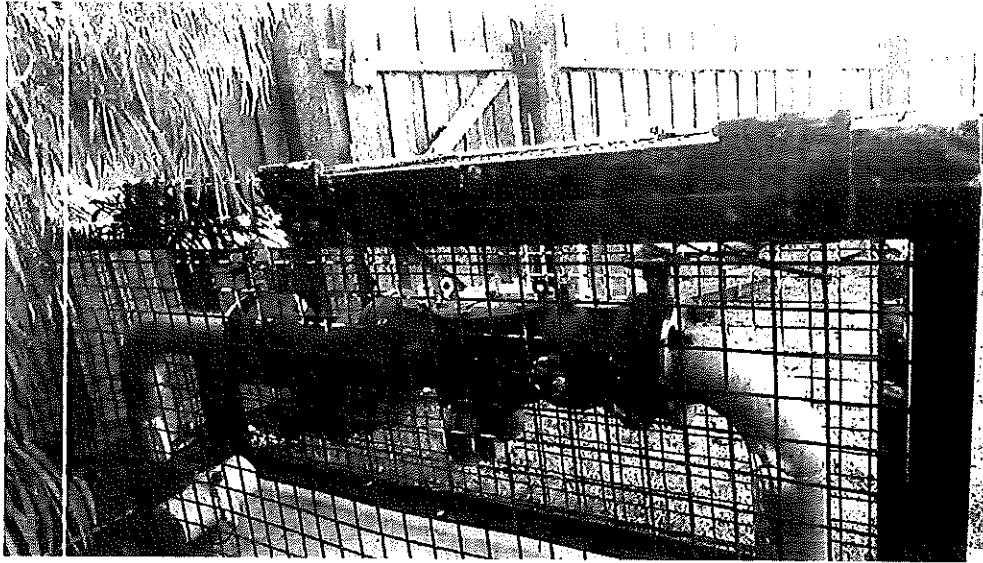
- b) The road into the property was originally a public road. As a result, the 100mm pipe was a normal piece of road infrastructure to service the town. The below photo depicts the front of the property with access to the pipeline for the fire brigade.



- c) Fire Hydrants were placed along the road by either the Crown or Council which are not used, have not been used in over 15 years and importantly, are not required under legislation for the operation of a Caravan Park. The below photo depicts one of the disused hoses.



- d) The 100mm meter situated at the rear for the property and referred to earlier is depicted below.



- e) The above 100mm meter and pipe solely services the fire hydrants and disused fire hoses and is isolated from the rest of the pipelines servicing our business and personal property. Its shut off point is depicted.
- f) One of the 32mm shut off points situated half way down the property is depicted below.



- g) For convenience of the Caravan Park in order to isolate areas should leaks or plumbing work be required, there are two 32mm meters feeding the property which service our business and our home. The first of these is depicted above and the second is below.



- h) Our quarterly water usage has remained stable since purchasing the property back in 1999. In the last quarter the total water usage for the property was 272 kL. This is consistent with the fact we do not require a 100mm main/meter and is also our largest quarter of the year as we have the greatest occupancy during this period. During winter, the business shuts down for 4 months and therefore water usage is negligible. This supports why we have never been charged for this infrastructure that we neither requested nor needed.
- i) We seek from you your support regarding the accuracy of the information provided in this correspondence to evidence the historical background to this matter given your specialised prior knowledge. If you are agreeable, I would see that information contained in this correspondence be formulated into a statutory declaration for you to sign, which I can then provide to TasWater when I meet with them in the coming weeks to put my position forward once again.
- j) As it stands:
 - (i) We do not earn sufficient profits to pay for such an excessively large piece of infrastructure that is the 100mm meter;
 - (ii) Legally we ought not to have to pay for the fixed costs associated with the 100mm meter as to do so would be to unjustly enrich TasWater as it is an unnecessary piece of infrastructure.
 - (iii) It would be morally reprehensible to charge a small business operator with limited draw on the water system for a piece of infrastructure they neither requested, consented to or needed in the first place.

Your support in relation to the above would be greatly appreciated so that I can resolve this matter once and for all.

I look forward to talking to you both on Friday morning.

Regards,

Graeme Gilmour

7 February 2019

928.5 SEWER RISING MAIN -- WYNYARD CARAVAN PARK

To: Council
Reporting Officer: Director Engineering Services
Responsible Manager: General Manager
File Reference: 7164067
Date: 6th November 2003

1. Recommendation

That Council:

- (a) *determine to budget for the relocation of the sewer rising main and water main from within PID 7164067 in the 2004/2005 financial years budget.*
- (b) *request the owners of the property to formally agree that they are prepared to accept ownership and future responsibility for the 100mm water main within the property once the work is completed.*

2. Summary

Recently Council received a development application for works at the Wynyard Caravan and Cabin Park.

During the assessment process it was found that Council has a 375mm diameter sewer rising main which runs through the property and is in fact located directly under the current works as well as well as numerous other buildings on site.

Within the property boundary Council also has a 100mm water main. This main is located under the internal road and under a section of camping area at the western end.

3. Background

The caravan park site was originally a Crown Lease with the Park being operated by the then Wynyard Council. Council leased the Caravan Park to a private operator in 1993.

Council has had a sewer rising main located in this area since approximately 1960.

Reports

In April 1993 the then Council granted approval for several backpacker accommodation units to be developed on the lease. The units were originally intended to be relocatable but over time have become fixed in their location. It would be possible to relocate the majority of them but time would be an issue in an emergency situation.

In June 1993 Council received complaints from residents to the south in relation to the blocking of their views and sun. In November 1993 Council agreed to a setback variation in relation to some of the backpacker units. In February 1995 Council agreed to two more units being installed.

In July 1998 Council agreed to the sale of the caravan park and the conversion of the land to freehold ownership. A condition of the conversion was that the existing services were to be accurately defined and easements created for them.

In June 2001 a planning permit was issued requiring a proposed dwelling to be constructed was to be clear of the Council's mains.

In October 2003 another application was submitted to build a dwelling over the main. Council officers consulted with the developers and advised them of the situation and risks associated with a development in this area.

4. Statutory Requirements

SEWERS AND DRAINS ACT 1954

Buildings not to be erected without consent over sewers or drains shown on deposited map

39. (1) *Where plans of a building or an extension of a building are, under any Act, submitted to a local authority and it is proposed to erect the building or extension over a sewer or drain that is shown on the map required by section thirteen, the local authority shall reject the plan unless it is satisfied that, in the circumstances of the particular case, it may appropriately consent to the erection of the proposed building or extension, either unconditionally or subject to compliance with such requirements as may be specified in the local authority's consent.*
- (2) *A building, the plans of which are not required under any Act to be submitted to a local authority for approval, shall not be erected over or within one metre of the space vertically above a sewer or drain without the prior approval of the local authority.*

Reports

- (3) *An approval under subsection (2) of this section may be given either unconditionally or subject to compliance with such requirements as may be specified in the approval.*
- (4) *Any question arising under this section between a local authority and a building owner which is not referable to the Building Appeal Board, may, on the application of the building owner, be determined summarily by two or more justices in petty sessions.*

5. Finances

The estimated cost to relocate the sewer rising main is \$120,000.

The estimated cost to convert the 100mm water main to an internal service is approximately \$5,000.

Both the above amounts will have to be budgeted for in the 2004/2005 financial year with the works being planned to occur when the least amount of loading is on the rising main.

6. Discussion

The main is approximately 1.5m deep and has an alignment that is not parallel with any features or boundary. The main is asbestos cement, which is very brittle. On an average day 2,800 kilolitres pass through the pipe and on a wet day the flow is in the vicinity of 7,000 kilolitres.

The relocation works will pose some issues in relation to the environment, one issue being the alignment and the other being effluent discharge when there is a cut over from the old sewer rising main to the new sewer rising main. These issues will need to be considered during the design phase of the project.

There is a water main that loops through from the yacht club through the caravan park and then along the foreshore and under the road connecting back into a water main on the Old Bass Hwy. Currently there are three water meters located within the property that Council read and service. It is possible to isolate the main to the property so that it can be utilised as a private fire service by installing a valve on the eastern end. This would then allow Council to install a single water meter to the property and therefore provide future savings. These works would not affect any other users.

Reports

7. Risk

If there were a substantial break in the sewer rising main it is possible that this would pose a significant risk to life and property.

Additionally if the water main were to break there also could be significant risk.

8. Conclusion

It is recommended that Council allocate funds to allow the relocation of the sewerage and mains in the 2004/05 budget.

This report is presented to Council for consideration.

CRS:- FRENCH/RANSLEY

That Council:

- (a) *determine to budget for the relocation of the sewer rising main and water main from within PID 7164067 in the 2004/2005 financial years budget.*
- (b) *request the owners of the property to formally agree that they are prepared to accept ownership and future responsibility for the 100mm water main within the property once the work is completed.*

CARRIED

15

RE: Tomorrow's Meeting - G & C Gilmour - 30b Old Bass Highway, Wynyard "Beach Retreat Tourist Park"

Shane Crawford <scrawford@warwyn.tas.gov.au>

Wed 6/03/2019 2:55 PM

To: Ryan Gilmour <ryan_gilmour@hotmail.com>

Cc: pwest@devonport.tas.gov.au <pwest@devonport.tas.gov.au>

Hi Ryan

On 12 February we engaged Benchmark Building Surveyors Pty Ltd to complete the work. Stefan Deverell is their appointed employee undertaking the work. At the time of engagement we provided him with your contact details to facilitate any onsite visitation.

We have continuously sought updates – the last of which was on 26 February which at that stage he was still completing preliminary investigations.

Regards

Shane

Shane Crawford

General Manager

Waratah Wynyard Council

21 Saunders Street (PO Box 168)

Wynyard TAS 7325

www.warwyn.tas.gov.au



From: Ryan Gilmour <ryan_gilmour@hotmail.com>

Sent: Tuesday, 5 March 2019 5:24 PM

To: Shane Crawford <scrawford@warwyn.tas.gov.au>

Cc: pwest@devonport.tas.gov.au

Subject: Fw: Tomorrow's Meeting - G & C Gilmour - 30b Old Bass Highway, Wynyard "Beach Retreat Tourist Park"

Hi Shane,

Have you been able to engage an Engineer yet to complete a report on the 100mm meter? If so, can you advise as to who has been engaged?

Regards,

Ryan Gilmour

From: Ryan Gilmour

Sent: Thursday, 7 February 2019 1:44 PM

To: pwest@devonport.tas.gov.au; scrawford@warwyn.tas.gov.au

Subject: Tomorrow's Meeting - G & C Gilmour - 30b Old Bass Highway, Wynyard "Beach Retreat Tourist Park"

Dear Mr West and Mr Crawford,

I attach the following:

1. A summary of the issues I wish to discuss with you tomorrow from a historical perspective to date; and
2. Minutes from Waratah-Wynyard Council Meeting on 17 November 2003.

Regards,

Graeme Gilmour



Virus-free. www.avast.com

RE: 30b Old Bass Highway, Wynyard - Beach Retreat Caravan Park

Stefan Deverell <stefan@benchmarkbuildingsurveyors.com.au>

Fri 29/03/2019 10:31 AM

To: Ryan Gilmour <ryan_gilmour@hotmail.com>

No problem Ryan. It is the abbreviation for the National Construction Code.

Kind Regards,

Stefan Deverell

Cert III in Carpentry and Joinery
Cert IV in Building and Construction
Grad Dip in Built Environment (Building Surveying)
Building Surveyor – Unrestricted CC7203

Benchmark Building Surveyors Pty. Ltd.

PO Box 471 Wynyard Tas 7325

P: 03 6442 3600

E: stefan@benchmarkbuildingsurveyors.com.au

Office located in Wynyard

Quality professional services throughout Tasmania



Benchmark Building Surveyors Pty Ltd



Please consider the environment before printing this e-mail

From: Ryan Gilmour <ryan_gilmour@hotmail.com>

Sent: Thursday, 28 March 2019 3:38 PM

To: Stefan Deverell <stefan@benchmarkbuildingsurveyors.com.au>

Subject: Re: 30b Old Bass Highway, Wynyard - Beach Retreat Caravan Park

Hi Stefan,

thank you for forwarding the below.

Only question i have for you is, what is the NCC?

regards,

Ryan Gilmour

From: Stefan Deverell <stefan@benchmarkbuildingsurveyors.com.au>

Sent: Thursday, 28 March 2019 3:11 PM

To: ryan_gilmour@hotmail.com

Subject: FW: 30b Old Bass Highway, Wynyard - Beach Retreat Caravan Park

Please see below information provided by Tas Fire. I have advised Council I believe a report from myself is unnecessary as I would only be referring to the statement from Tas Fire and would not go against their advice.

Kind Regards,

Stefan Devereil

Cert III in Carpentry and Joinery
Cert IV in Building and Construction
Grad Dip in Built Environment (Building Surveying)
Building Surveyor – Unrestricted CC7203

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E: stefan@benchmarkbuildingsurveyors.com.au

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Quality professional services throughout Tasmania



Benchmark Building Surveyors Pty Ltd



Please consider the environment before printing this e-mail

From: Whiteway, Robert (TFS) <Robert.Whiteway@fire.tas.gov.au>

Sent: Wednesday, 13 March 2019 2:34 PM

To: Stefan Devereil <stefan@benchmarkbuildingsurveyors.com.au>

Cc: NorthWestRegion (TFS) <NorthWest.Region@fire.tas.gov.au>

Subject: RE: 30b Old Bass Highway, Wynyard - Beach Retreat Caravan Park

Hi Stefan,

Thankyou for the information. This appears enough to make a decision on and unnecessary to make a site visit.

I have consulted with our guys here and as we assumed yesterday the hydrants and hose reels were installed as part of the planning permit from the council after direction was sought from the Chief Officer. (Indicative of the era rather than this particular property).

The placement of the hydrants seems ideal and operationally acceptable for the Fire Service.

Although not a requirement of the NCC there is a need to provide protection for the property. In this situation where there is considerable distance to cover, and several properties in and surrounding the caravan park it would be less than ideal to remove this valuable resource.

It also appears that the hydrants have supported the expansion of buildings to the site though previous approvals.

Therefore in this instance the Chief Officer would not support the removal of hydrants or hose reels.

I hope this has provided enough advice, however please don't hesitate to contact me if you require more information.

Kind regards

Robbie Whiteway
Consultant

Building Safety

Tasmania Fire Service

Service | Professionalism | Integrity | Consideration

15 Three Mile Line, Burnie | GPO Box 1015 Burnie Tasmania 7320

Phone (03) 6477 7218 | Mobile 0419 879 653

robert.white@fire.tas.gov.au | www.fire.tas.gov.au



Firefighters deserve respect and recognition for the service we provide our community. Fair go for firefighters!

For trim pls 3/C/0037 In my office

D

RE: TasWater Dispute - 30b Old Bass Highway, Wynyard (Mr & Mrs Gilmour)

Shane Crawford <scrawford@warwyn.tas.gov.au>

Tue 7/05/2019 11:19 PM

To: Ryan Gilmour <ryan_gilmour@hotmail.com>

Thanks Ryan

I will review and have a reply to you very soon

Regards

Shane

From: Ryan Gilmour <ryan_gilmour@hotmail.com>

Sent: Friday, 3 May 2019 1:48 PM

To: Shane Crawford <scrawford@warwyn.tas.gov.au>; pwest@devonport.tas.gov.au; gcgilmour51@gmail.com

Subject: Fw: TasWater Dispute - 30b Old Bass Highway, Wynyard (Mr & Mrs Gilmour)

Importance: High

Hi Shane,

I refer to the below email and attached correspondence i emailed you last month.

Can you please provide me with a response as i am in talks with TasWater currently and do require your correspondence to put some further pressure on them to resolve this matter.

Regards,
Ryan Gilmour

From: Ryan Gilmour

Sent: Monday, 15 April 2019 4:27 PM

To: scrawford@warwyn.tas.gov.au

Cc: pwest@devonport.tas.gov.au; gcgilmour51@gmail.com

Subject: TasWater Dispute - 30b Old Bass Highway, Wynyard (Mr & Mrs Gilmour)

Dear Mr Crawford,

Please find attached the following in relation to the above matter:

1. Letter to you;
2. Email from Tasmanian Fire Services (Attachment "1")
3. Letter to Julie Mercer at TasWater dated 5.4.19 (Attachment "2").

Regards,

Ryan Gilmour



Virus-free. www.avast.com

15 April, 2019

The General Manager
Waratah Wynyard Council
Attention: Shane Crawford
By email only: scrawford@warwyn.tas.gov.au

Dear Sir,

Taswater Dispute – 30b Old Bass Highway, Wynyard

I refer to the meeting on site at 30b Old Bass Highway, Wynyard in Tasmania ("the Property") on 8 February 2019.

The agreement reached on the above date was that the Waratah-Wynyard Council at its expense, would engage a Surveyor to undertake an investigation into the water requirements for the Property insofar as water pipelines and meters were concerned and draft a report in relation to same. To this end, *Benchmark Building Surveyors Pty Ltd* were engaged by your office and Mr Stefan Deverell took carriage of this file. I have been in communications with Mr Deverell who has verbally confirmed with me that he has no problem with the existing 32mm meter and pipeline being more than sufficient to service the Property for all of its water needs. Mr Deverell deferred to the Tasmanian Fire Service for comment in relation to the legalities surrounding the need for a pipeline for fire fighting purposes and specifically any requirement for a 100mm meter and pipeline to service same. I have received a copy of the email sent to Mr Deverell by Mr Robert Whiteway of Tasmanian Fire Service who conducted an apparent review of this issue. A copy of this email from Mr Whiteway dated 13 March, 2019 is attached and marked "1" for ease of reference.

Whilst it is clear from Mr Whiteway's email he would like to see the 100mm pipeline remain operational for fire fighting purposes as it is a valuable resource, the most important line from this correspondence insofar as I am concerned is his comment: "Although not a requirement of the NCC...". That is, there is no requirement under the National Construction Code (NCC) to have such infrastructure in place. That is indeed the crux of the argument that has been going on for the last decade. As a piece of public infrastructure, it can remain, but the costs associated with same do not create a contract between the Corporation (Taswater) and the land owner (Mr & Mrs Gilmour) such that it should not now nor ever have been a private cost for Mr & Mrs Gilmour.

Having spoken to Mr Deverell, I am aware that he has questioned with your office the need to provide a report in light of the email from Mr Whiteway. That said, I would appreciate a report in relation to this matter as expert proof on the issue, if only to confirm the following information:

- (a) That the Property is serviced by a 32mm pipeline and associated meter as well as a 100mm pipeline and associated meter.
- (b) That all infrastructure on the Property including taps are serviced by the 32mm pipeline and meter and as such water use for same is recorded on the 32mm meter.
- (c) That the 32mm meter and pipeline is currently sufficient to service all the water needs of the Property (excluding any fire related services).

- (d) That the 100mm pipeline and associated meter runs the length of the Property and services the now disused fire hose reels as well as Fire Service access points for members of the Tasmanian Fire Service to draw water from in case of a fire.
- (e) That in accordance with Mr Whiteway's advice, there is no legal requirement for the Property under the National Construction Code to have or maintain a dedicated pipeline for fire services nor any pipeline for this purpose.
- (f) The desire of Tasmanian Fire Service is for the 100mm dedicated fire service pipeline to remain in place as it represents a valuable resource for its office in case of a fire.

The above, I would suggest fairly outlines the situation in respect to all parties in this matter.

Unfortunately, on or about 27 March 2019, Mr & Mrs Gilmour received a purported final "review" of their complaint from Ms Juliet Mercer of Taswater by way of letter dated 25 March, 2019. It was clear to me from that correspondence that her review was based on reading the historical material on file from other employees within both the former Cradle Mountain Water and now Taswater and this had led her into error. As such, I clarified in writing the position with her in respect to the 100mm meter and pipeline in a letter dated 5 April, 2019 and emailed to same on 10 April, 2019. Attached and Marked "2" is a copy of that correspondence for your consideration. You will note this letter makes historical reference to the Property and what occurred in both 2003 and 2004 regarding the location of the 100mm meter.

I appreciate that as a water issue you may see this as outside of your control or may wish to remain at arms length from it, however your assistance at this point would be much appreciated as I attempt to resolve this dispute without resort to Court. If the matter does end up in Court I am certain there will be a need for certain current and former staff of the Waratah-Wynyard Council to be called to give evidence in relation to the history of the 100mm meter and pipeline and I am taking the opportunity to try and avoid this potential outcome by laying the cards on the table for all parties to properly assess this matter. To this end, in addition to receiving a report from *Benchmark Building Surveyors Pty Ltd* addressing the above, I would also appreciate if you or another senior employee of the Waratah-Wynyard Council could provide some support in writing to Ms Mercer at Taswater. Such support I would ask simply address the facts as you understand them to be from the Perspective of Council prior to 2009 when it owned the water and sewerage assets on the Property. This can simply be limited to the following:

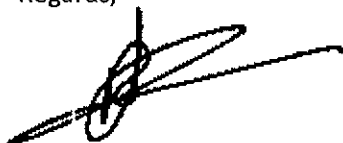
- (i) That from 1999 until the passing of the *Water and Sewerage Corporation Act 2008* and subsequent transfer of Council owned water and sewerage assets to the entity Cradle Mountain Water in 2009, the Waratah-Wynyard Council did not charge Mr & Mrs Gilmour as owners of the Property for the 100mm water main and associated pipeline;
- (ii) That the Waratah-Wynyard Council did not consult no request at any time the owners of the Property, Mr & Mrs Gilmour, to formally agree that they were prepared to accept ownership and future responsibility for the 100mm water main within the Property as it ought to have done in accordance with the recommendation and subsequent resolution passed by the Waratah-Wynyard Council at its Meeting of Council held on 17 November 2003 and referred to in the minutes therein; OR

- (iii) That the Waratah-Wynyard Council has no record of the owners of the Property, Mr & Mrs Gilmour, being either approached or agreeing formally or otherwise that they are prepared to accept ownership and future responsibility for the 100mm water main within the Property as it ought to have done in accordance with the recommendation and subsequent resolution passed by the Waratah-Wynyard Council at its Meeting of Council held on 17 November 2003 and referred to in the minutes therein.

If the above were obtained from your office, it would go a long way to assisting Mr & Mrs Gilmour explaining the history of the 100mm meter to Taswater to best achieve a sensible resolution to this matter. Such communication from your office would also be able to be put to the Ombudsman should matters progress in that direction to enable the Ombudsman to have a full understanding of the history of this matter.

Finally, if you have in your records any plan of the water infrastructure for the Property in your possession, please provide me with a copy of same as should such plan be accurate, it will of course be helpful to provide Taswater with such information, if only to demonstrate how the water infrastructure existed on the property up to 2009.

Regards,

A handwritten signature in black ink, appearing to be 'Ryan Gilmour', with a long horizontal stroke extending to the right.

Ryan Gilmour

CC: General Manager
Devonport Council
Attention: Paul West
By email only: pwest@devonport.tas.gov.au

E

Re: TasWater Dispute - 30b Old Bass Highway, Wynyard (Mr & Mrs Gilmour)

Ryan Gilmour <ryan_gilmour@hotmail.com>

Mon 20/05/2019 4:03 PM

To: Shane Crawford <scrawford@warwyn.tas.gov.au>

Dear Shane,

Thank you for the below. Can you please advise as to how you are progressing with each request?

I was told last week that TasWater have almost completed their response to me in relation the 100mm meter that exists on the property. Time is therefore becoming somewhat critical in relation to the input from you on behalf of the Waratah Wynyard Council. Whilst Mr Deverell may need further time, i would appreciate if you could draft some basic correspondence to TasWater in the next few days that addresses the below points as referred to previously in my letter to you dated 15 April, 2019

Your correspondence could be limited to:

- (i) That from 1999 until the passing of the *Water and Sewerage Corporation Act 2008* and subsequent transfer of Council owned water and sewerage assets to the entity Cradle Mountain Water in 2009, the Waratah-Wynyard Council did not charge Mr & Mrs Gilmour as owners of the Property for the 100mm water main and associated pipeline;
- (ii) That the Waratah-Wynyard Council did not consult nor request at any time the owners of the Property, Mr & Mrs Gilmour, to formally agree that they were prepared to accept ownership and future responsibility for the 100mm water main within the Property as it ought to have done in accordance with the recommendation and subsequent resolution passed by the Waratah-Wynyard Council at its Meeting of Council held on 17 November 2003 and referred to in the minutes therein;
OR
- (iii) That the Waratah-Wynyard Council has no record of the owners of the Property, Mr & Mrs Gilmour, being either approached or agreeing formally or otherwise that they are prepared to accept ownership and future responsibility for the 100mm water main within the Property as it ought to have done in accordance with the recommendation and subsequent resolution passed by the Waratah-Wynyard Council at its Meeting of Council held on 17 November 2003 and referred to in the minutes therein.

The above points are non controversial and therefore my request is that you simply copy and paste from the above into a letter from your office directed to TasWater. The person dealing with this file at TasWater is Sophie Rowlands. she can be contacted at Sophie.Rowlands@taswater.com.au . I would appreciate if you could attend to this asap.

Regards,
Ryan Gilmour

From: Shane Crawford <scrawford@warwyn.tas.gov.au>

Sent: Thursday, 9 May 2019 1:41 PM

To: Ryan Gilmour

Subject: RE: TasWater Dispute - 30b Old Bass Highway, Wynyard (Mr & Mrs Gilmour)

Hi Ryan

Thankyou for the letter and associated attachments. From my review of the content, in summary you seek three actions –

- WWC to seek a completed report from Stefan Deverell

- WWC to write to Juliet Mercer of TasWater regarding the matter
- WWC to try to find any plan of the water infrastructure for the property

I will follow up and action each of these requests accordingly in a bid to reach timely resolution to the matter and keep you updated with progress.

Regards

Shane

Shane Crawford

General Manager

Waratah Wynyard Council

21 Saunders Street (PO Box 168)

Wynyard TAS 7325

P: (03) 6443 8300 | www.warwyn.tas.gov.au



From: Ryan Gilmour <ryan_gilmour@hotmail.com>

Sent: Friday, 3 May 2019 1:48 PM

To: Shane Crawford <scrawford@warwyn.tas.gov.au>; pwest@devonport.tas.gov.au; gcgilmour51@gmail.com

Subject: Fw: TasWater Dispute - 30b Old Bass Highway, Wynyard (Mr & Mrs Gilmour)

Importance: High

Hi Shane,

I refer to the below email and attached correspondence i emailed you last month.

Can you please provide me with a response as i am in talks with TasWater currently and do require your correspondence to put some further pressure on them to resolve this matter.

Regards,

Ryan Gilmour

From: Ryan Gilmour

Sent: Monday, 15 April 2019 4:27 PM

To: scrawford@warwyn.tas.gov.au

Cc: pwest@devonport.tas.gov.au; gcgilmour51@gmail.com

Subject: TasWater Dispute - 30b Old Bass Highway, Wynyard (Mr & Mrs Gilmour)

Dear Mr Crawford,

Please find attached the following in relation to the above matter:

1. Letter to you;
2. Email from Tasmanian Fire Services (Attachment "1")
3. Letter to Julie Mercer at TasWater dated 5.4.19 (Attachment "2").

Regards,

Ryan Gilmour

RE: TasWater Dispute - 30b Old Bass Highway, Wynyard (Mr & Mrs Gilmour)

Shane Crawford <scrawford@warwyn.tas.gov.au>

Tue 21/05/2019 4:56 PM

To: Ryan Gilmour <ryan_gilmour@hotmail.com>

Hi Ryan

I'll contact Juliet tomorrow and follow up the conversation in writing. Mr Deverell has indicated he will need approx. two weeks to finalise a report.

I'll follow up again regarding the plans.

Regards

Shane

From: Ryan Gilmour <ryan_gilmour@hotmail.com>

Sent: Monday, 20 May 2019 4:04 PM

To: Shane Crawford <scrawford@warwyn.tas.gov.au>

Subject: Re: TasWater Dispute - 30b Old Bass Highway, Wynyard (Mr & Mrs Gilmour)

Dear Shane,

Thank you for the below. Can you please advise as to how you are progressing with each request?

I was told last week that TasWater have almost completed their response to me in relation the 100mm meter that exists on the property. Time is therefore becoming somewhat critical in relation to the input from you on behalf of the Waratah Wynyard Council. Whilst Mr Deverell may need further time, i would appreciate if you could draft some basic correspondence to TasWater in the next few days that addresses the below points as referred to previously in my letter to you dated 15 April, 2019

Your correspondence could be limited to:

- (i) That from 1999 until the passing of the *Water and Sewerage Corporation Act 2008* and subsequent transfer of Council owned water and sewerage assets to the entity Cradle Mountain Water in 2009, the Waratah-Wynyard Council did not charge Mr & Mrs Gilmour as owners of the Property for the 100mm water main and associated pipeline;
- (ii) That the Waratah-Wynyard Council did not consult nor request at any time the owners of the Property, Mr & Mrs Gilmour, to formally agree that they were prepared to accept ownership and future responsibility for the 100mm water main within the Property as it ought to have done in accordance with the recommendation and subsequent resolution passed by the Waratah-Wynyard Council at its Meeting of Council held on 17 November 2003 and referred to in the minutes therein; **OR**
- (iii) That the Waratah-Wynyard Council has no record of the owners of the Property, Mr & Mrs Gilmour, being either approached or agreeing formally or otherwise that they are prepared to accept ownership and future responsibility for the 100mm water main within the Property as it ought to have done in accordance with the recommendation and subsequent resolution passed by the Waratah-Wynyard Council at its Meeting of Council held on 17 November 2003 and referred to in the minutes therein.

G

Report - 30b Old Bass Highway, Wynyard

Shane Crawford <scrawford@warwyn.tas.gov.au>

Thu 13/06/2019 9:47 AM

To: Ryan Gilmour <ryan_gilmour@hotmail.com>

Cc: Corey Gould <cgould@warwyn.tas.gov.au>

 1 attachments (508 KB)

30b Old Bass Highway, Wynyard.pdf;

Hi Ryan

We received the report from Benchmark Building Surveyors yesterday regarding the fire hose reels and hydrants at: 30b Old Bass Highway, Wynyard and it is attached for your information.

Regards

Shane


Shane Crawford

General Manager

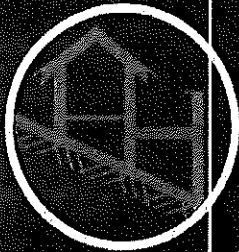
Waratah Wynyard Council

21 Saunders Street (PO Box 168)

Wynyard TAS 7325

P: (03) 6443 8300 | www.warwyn.tas.gov.au

 **WARATAH WYNYARD**
COUNCIL



Benchmark Building Surveyors Pty Ltd

12.06.2019

Shane Crawford
PO Box 168,
Wynyard

Dear Shane:

Report regarding requirement for 100mm main at 30b
Old Bass Highway, Wynyard

Benchmark Building Surveyors Pty Ltd have been engaged by Waratah – Wynyard Council (WWC) to provide a report stating as to whether the 100mm main currently installed at 30b Old Bass Highway, Wynyard is required to serve the Tourist Park. The 100mm main currently services two hydrant plugs and three fire hose reels (FHR).

Please note that the scope of this report does not include the dispute between the current owners and Taswater/WWC over the installation of the 100mm main meter, disputes as to whether the 100mm main could be located around the perimeter of the property rather than through the centre or any other disputes ongoing between the parties. The sole purpose of this report is to outline whether the 100mm main is necessary for the operation of the Tourist Park.

The installation of the fire hose reels and use of fire hydrant plugs located on site was a requirement of the Planning Permit for the caravan park prior to the property being owned by the Gilmour's. This decision was reached as a result of direction sought from the Chief Officer of the Tasmanian Fire Service (TFS) by WWC. I would point out that it is extremely common for FHR and hydrants to be required in Tourist Parks by respective Council's in order to issue Planning Permits. 30b Old Bass Highway, Wynyard is not the only park even in the same municipality required to provide these features.

It was also mentioned by Robert Whiteway of the TFS that the current fire hydrants have been utilised on future Planning Permits for the expansion of buildings to the site, Benchmark has not seen these future Permits to confirm.

Head Office:
128 Goldie Street
Wynyard TAS 7325
Postal Address:
PO Box 471
Wynyard TAS 7325
P: 03 6442 3600
P: 03 6442 3611
E: admin@benchmark
buildingsurveyors.com.au

ABN 35 088 285 527
ACH 088 285 527



Benchmark Building Surveyors Pty Ltd

In a letter dated 15th April 2019, Ryan Gilmour acting on behalf of his parents, the property owners, stated that I informed him that I "have no problem with the existing 32mm meter and pipeline being more than adequate to service the property for all its water needs". This is not correct, I did state that for domestic uses inside the buildings a 32mm main is suitable, but what needs to be understood is that these buildings cannot be viewed separately from the Tourist Park as a whole, the two are inextricably linked. A 32mm main may be enough to service domestic supplies to a building however for those collection of buildings to be installed as a Tourist Park, Council and TFS determined that fire hose reels and hydrants were necessary.

It was also noted by Mr. Gilmour that the 100mm main services FHR which are now disused. These FHR should not be disused and should be tested and maintained in accordance with *AS1851-2012 Routine Service of Fire Protection Systems*. The required testing frequency of FHR is six monthly.

On the 12th of March 2019, I requested a report as to whether the TFS would consider the removal of these assets through Robert Whiteway, Robert at the time of request was the contact for Chief Officer Reports from the TFS on the North-West Coast. On the 13th of March 2019 Robert advised that the TFS would not support the removal of the FHR or hydrants.

As it was the TFS who deemed these features necessary when the Tourist Park was approved initially, I will not go against the advice provided by the TFS that these FHRs and hydrants must remain whilst the Tourist Park is in operation.

Yours sincerely

Stefan Deverell
Building Surveyor – CC7203

Head Office:
128 Goldie Street
Wynyard TAS 7325
Postal Address:
PO Box 471
Wynyard TAS 7325
P: 03 6442 3600
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E: admin@benchmark
buildingsurveyors.com.au

ABN 35 088 285 527
ACN 088 285 527

"G1"

Occupational Licensing (Building Surveyors) Code of Practice 2018

March 2018

I, Dale Edward Webster, Administrator of Occupational Licensing, establish the following Code of Practice under section 53 of the *Occupational Licensing Act 2005*.

1. Title

This Code of Practice may be cited as the *Occupational Licensing (Building Surveyors) Code of Practice 2018*.

2. Commencement

This Code of Practice takes effect on the date of its publication in the Gazette.

(Web publication note:

As required by s.53(1) of the Occupational Licensing Act 2005, this Code was published in the Gazette on 21/03/2018.

3. Application of Acts Interpretation Act 1931

The *Acts Interpretation Act 1931* applies to this Code of Practice.

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1. Purpose

The purpose of the code is to:

- set standards of conduct and professionalism expected from building surveyors in the performance of statutory building surveying functions
- inform the community of the standards of conduct and professionalism expected from a building surveyor
- provide consumer, regulatory, employing and professional bodies, with a basis for making decisions regarding standards of conduct and professionalism expected from building surveyors.

2. Code of Practice

A building surveyor in undertaking their role within the scope of their licence must:

1. Perform building surveying functions in the public interest.
2. Abide by ethical standards expected by the community for legislative conformity and reputable conduct.
3. Not perform building surveying functions where there is the potential for a conflict of interest.
4. Maintain satisfactory levels of competence.
5. Ensure that their engagement to undertake their functions is valid and in accordance with the *Building Act 2016*.
6. Comply with legislative requirements.
7. Not perform building surveying functions beyond their level of competence or outside their area of expertise.
8. Maintain confidentiality.
9. Take all reasonable steps to obtain all relevant facts when performing building surveying functions.
10. Ensure that all aspects of design are adequately documented and in accordance with the *Building Act 2016* prior to issuing a certificate of likely compliance.
11. Ensure that performance solutions pursuant to the National Construction Code (previously known as the Building Code of Australia) are developed in accordance with the Code.
12. Ensure building owners are adequately informed of performance solutions prior to issuing a certificate of likely compliance.
13. Clearly document reasons for building surveying decisions.

14. Ensure that sufficient and adequate inspections are carried out to be reasonably satisfied that building work complies with the *Building Act 2016* and any relevant approvals.
15. Be accountable for the supervision, competence and conduct of staff and contractors whom they employ or contract with to assist them in fulfilling their functions as a building surveyor.

3 . Scope

This code of conduct applies to all building surveyors who are licensed building service providers under the *Occupational Licensing Act 2005*, and is issued in accordance with Section 53 of that Act.

Subsection 4(c) of Section 53 includes this provision:

A code of practice may contain requirements to be observed for –
building services providers, in relation to –

- (i) professional conduct, competence, diligence and integrity; and
- (ii) professional responsibilities of each occupation and class of building services providers; and
- (iii) compliance with legislation related to building services work; and
- (iv) communication with all parties involved in building services work; and
- (v) performance management of holders of a building services licence; and
- (vi) conduct and behaviour of the holder of a building services licence.

4 . Key Legislation and Documents (as amended from time to time)

- *Occupational Licensing Act 2005*
- *Occupational Licensing (Building Services Work) Regulations 2016*
- *Occupational Licensing (Building Services Work) Determination 2017*
- *Building Act 2016*
- *Building Regulations 2016*
- Director's Specified List
- Director's Determination - Categories of Building and Demolition Work

5. Explanatory Statements

Although the code of practice does not give detailed professional advice on specific issues and areas of practice, the explanatory statements may be used to clarify the meaning and scope of the code. The explanatory statements do not in any way limit the extent of the standards.

1. A building surveyor must perform building surveying functions in the public interest.

A building surveyor must perform building surveying functions in the public interest and must not take action that would compromise the health and safety of any person, or the amenity of any person's property, or significantly conflict with a local planning scheme. The interests of a building surveyor's client must be placed after the interests of the community wherever there is a conflict of interest.

Examples of when a building surveyor must perform building surveying functions in the public interest include:

- Enforcement action¹ – where engaged so that a power exists and it is appropriate to do so, a building surveyor must take suitable enforcement action as an authorised person in respect of building work that does not comply with legislative requirements.
- Discretion – a building surveyor when exercising any discretion in performing building surveying functions must ensure the health and safety of any person, or the amenity of any person's property is not compromised.
- Performance – a building surveyor should ensure that all performance solutions are developed and documented in accordance with the National Construction Code and the Australian Building Code Board's Evidence of Suitability Handbook²

2. A building surveyor must abide by ethical standards expected by the community.

A building surveyor, must when performing building surveying functions:

- apply all relevant building laws, regulations, relevant standards and guidelines reasonably without favour;
- perform the functions with honesty, integrity and impartiality;
- not knowingly enter into any conduct that could bring, or tend to bring, the profession of building surveyors into disrepute; and

¹ See Appendix I for a guide to compliance and enforcement under the *Building Act 2016*

² Document available on the ABCB website: <https://www.abcb.gov.au/>

- maintain financial viability, including ensuring fees taken in advance are held against the relevant project.

3. A building surveyor must not perform building surveying functions where there is the potential for a conflict of interest.

A building surveyor must not perform building surveying functions where there is the potential for a conflict of interest between their duty to their clients, profession, peers and the public with their personal and business interests.

Section 28 of the *Building Act 2016* specifically states:

- (2) *A person must not accept an engagement to perform the functions or exercise the powers of a building surveyor, in respect of work performed on premises, if the person –*
- (a) does not hold a licence under the Occupational Licensing Act 2005 that authorises him or her to perform those functions, or exercise those powers, of a building surveyor; or*
 - (b) has performed, or is required under the Act to perform, the functions or powers of a permit authority in respect of the work; or*
 - (c) has provided professional advice in respect of the work in accordance with section 33 ; or*
 - (d) is the owner of the premises where the work is to be performed; or*
 - (e) was an employee of the owner of the premises immediately before he or she was engaged as a building surveyor for the premises; or*
 - (f) is named, or is to be named, on a permit in relation to the work as the licensed builder or building services provider, or is an employee of the licensed builder or building services provider so named; or*
 - (g) is a private consultant of a person referred to in paragraph (d) or (f) in respect of the work; or*
 - (h) is the employer of a person referred to in paragraph (f) or of persons performing building contracts generally; or*
 - (i) has prepared, or reviewed, the design for the building work or a performance solution proposed as part of the work; or*
 - (j) was employed in the immediately preceding 12-month period by a designer of the work; or*
 - (k) has a direct, or indirect, pecuniary interest in –*
 - (i) the designer of the work; or*
 - (ii) the work or premises where the work is to be performed; or*

(iii) any other person associated with the work or premises where the work is to be performed; or

(l) has a potential conflict of interest between his or her functions as a building surveyor and his or her personal or business interests.

4. A building surveyor must maintain a satisfactory level of competence.

A building surveyor must commit to a process of continuing professional development to ensure they constantly keep informed of developments in building design and practice, business management principles, and the law relevant to performing building surveying functions.

5. Ensure that their engagement to undertake their functions is valid and in accordance with the *Building Act 2016*.

The *Building Act 2016* contains very specific provisions related to the engagement of a building surveyor including that:

- a building surveyor must not perform any of the functions, or exercise any of the powers, of a building surveyor in respect of work unless he or she is engaged, by the owner of premises where the work is being performed, to perform the functions, or exercise the powers, of a building surveyor in respect of the work.
- a person engaged as a building surveyor must not perform any of the functions, or exercise any of the powers, of a building surveyor that he or she is not authorised to perform or exercise under the *Building Act 2016*
- a person must not accept an engagement as a building surveyor unless the prospective building surveyor has provided, to the person engaging the person as a building surveyor, a complete schedule of fees that may be charged by the building surveyor in the course of the engagement; and the person engaging the building surveyor has agreed to that schedule of fees.

A building surveyor who has a limited licence must not accept engagement for work which is the work of a building surveyor with an open licence. The building surveyor limited is unable to subcontract the work which is out of scope of their licence.

Where a building surveyor engagement is referred or transferred to another building surveyor, it must be in accordance with the *Building Act 2016*. All files, including notes must be referred to the new building surveyor. There must be full disclosure of information relevant to the building work.

6. A building surveyor must comply with legislative requirements.

A building surveyor must comply with the legislative requirements that regulate or govern building surveyors in the performance of building surveying functions.

7. A building surveyor must not perform building surveying functions beyond their level of competence or outside their area of expertise.

A building surveyor, when performing building surveying functions, must have:

- the appropriate level of licensing – limitations are placed on the number of storeys and the floor area of buildings that may be assessed according to the level of licensing of the building surveyor. These limitations also apply to existing buildings where new building work is intended to be carried out.

For example, a practitioner licensed at the level of building surveyor (limited) cannot issue a certificate of likely compliance for a minor addition to an existing building with a rise of more than three storeys or a floor area of more than 2000m²³.

- the appropriate level of competence, and expertise for the building surveying functions performed.

For example, an application before a building surveyor may require assessment of a complex performance solution, or interpretation of requirements of an interim planning scheme. If a building surveyor is not experienced in the particular area then written advice from a suitably qualified or experienced person must be obtained before issuing the certificate of likely compliance.

8. A building surveyor must maintain confidentiality.

A building surveyor must not divulge confidential or commercially sensitive information in the performance of their building surveying functions unless:

- directed to do so in writing by the appropriate authority following National Privacy Principles under the *Privacy Act 1988* (Cwlth)⁴
- the disclosure of the information is authorised by legislation

As examples, the *Building Act 2016* specifically requires a building surveyor to provide information to the permit authority for the purposes of a permit application, and to the Director of Building Control for the purpose of an audit.

³ See the scheme of accreditation at :

https://www.justice.tas.gov.au/__data/assets/pdf_file/0003/278193/GB186.pdf

⁴ See Privacy Commissioners website www.privacy.gov.au

9. A building surveyor must take all reasonable steps to obtain all relevant facts when performing building surveying functions.

A building surveyor must:

- keep themselves informed and consider all relevant and available information when performing building surveying functions
- demonstrate that all reasonable steps have been taken to obtain and document all available facts relevant to performing building surveying functions.

For example, a building surveyor should undertake a site investigation where possible to make themselves aware of any site conditions that may influence a decision on the likely compliance of the design they are considering.

For instance:

- the contours of an allotment that may influence the installation of site drainage,
- the presence of a disused cellar would be detected, or
- the presence of a spring may significantly alter the design.

10. Ensure that all aspects of design are adequately documented and in accordance with the *Building Act 2016* prior to issuing a certificate of likely compliance.

The Director of Building Control has issued a minimum standard for aspects of the design documentation as part of the Director's Specified List. Building surveyors must ensure that these minimum standards are adhered to prior to issuing a certificate of likely compliance.

The design documentation must be both adequate to show compliance with the National Construction Code and sufficient to allow for the building to be constructed in accordance with the National Construction Code. For instance:

- It is insufficient to specify cladding on a building over three storeys as Aluminium Composite Panel (ACP) on the basis that the builder will choose the right one. The Panel must be specified as an actual compliant product (e.g ACP with a mineral core containing less than x % PE).

Professional conduct will also likely see a building surveyor identify issues such as those listed below and raise them with their client:

- Design of plumbing work, to the extent that its proposed location appears consistent with the design of the building work; or that proposed plumbing installations (such as allowing space for an on-site wastewater management system) have been taken into consideration in the building design process

- If required, the design of Protection Work to protect adjoining property or persons using adjoining land
- If required, suitable procedures and methods for the safe demolition of buildings or parts of buildings
- Access to, or accommodation of building services (for example, whether required telecommunication cabling can be installed within a building without an adverse impact on its elements such as on fire-rated walls or ceilings).

11. Ensure that performance solutions under the National Construction Code are developed in accordance with the Code.

As the National Construction Code is performance based, one method of meeting the requirements is to follow an accepted construction practice or deemed-to-satisfy solution. However if this method is not used then there is a need to document the building solution adopted and the particular verification method, evidence of suitability and the assessment method used to demonstrate compliance with the performance standards of the code.

12. Ensure building owners are adequately informed of performance solutions prior to issuing a certificate of likely compliance.

Performance solutions are usually introduced to enable innovation in design, or to overcome issues that may be created by a deemed-to-satisfy approach. However they often result in the need for ongoing maintenance, which may then become an ongoing cost to the owner. It is important that building surveyors are satisfied that the owner has been adequately informed of the performance solution so they can make an informed decision to include that aspect of the design or have it redesigned. In relation to permit building work this acknowledgement by an owner is a legislative requirement.

13. A building surveyor must clearly document reasons for decisions.

A building surveyor must maintain properly documented reasons for building surveying decisions.

Documented reasons must include:

- the findings of fact, for example, reliance on results of tests carried out
- a reference to evidence or other material on which the finding was based, for example, reliance on Standards published by Standards Australia
- the reasons for the decision.

Examples of decisions requiring documented reasons to be maintained by building surveyors:

- when building surveyors obtain expert advice on building matters outside the scope of their qualifications or expertise, the surveyor must retain the documented advice, for example, a performance solution involving complex fire engineering analysis
- when building surveyors obtain advice and decide no other approvals are required under the planning scheme, the surveyor must retain the documented advice, including the source of the advice
- when building surveyors accept a certificate from a competent person the surveyor must document the reasons for considering the person giving the certificate as competent, and retain the documents or information relied on in deciding the person as competent
- when building surveyors inspect building work, the surveyor must document the results of the inspection
- document any decision made in relation to performance solutions where the building surveyor has concluded that a performance solution complies with the performance requirements of the National Construction Code.

14. A building surveyor must ensure that sufficient and adequate inspections are carried out to be reasonably satisfied that building work complies with the *Building Act 2016* and any other relevant approvals.

A building surveyor must ensure that sufficient and adequate inspections are carried out during the construction of building work to reasonably satisfy themselves the work complies with the *Building Act 2016* and the relevant approval for the work.

These inspections are to be carried out in accordance with best industry practice for the inspection of building work by building surveyors. However, the role of a building surveyor is not intended to be that of supervisor to the builder nor to ascertain compliance with contract documents.

The use of photographs, video or the like provided by the owner or builder are not considered adequate replacements for physical inspection.

A building surveyor, when performing building surveying functions, must ensure any building work that does not comply with the Act is promptly notified to the responsible builder who is to be directed to bring the building work into compliance with the Act and the approval for that work.

The builder must notify the building surveyor when relevant stages of the work are ready for inspection so that the building surveyor can undertake their responsibilities. (A building surveyor cannot be expected to be able to satisfy themselves of compliance where a builder

has failed to notify in time for critical work to be inspected and a building surveyor cannot be expected to keep watch on all sites they have responsibility for at all times.)

15. Be accountable for the supervision, competence and conduct of staff and contractors whom they employ, or contract with, to assist them in fulfilling their role as a building surveyor.

While the building surveyor is engaged as the responsible party to undertake their functions, it is not always possible to personally attend to all functions or activities, including administrative support functions. When a building surveyor engages or authorises someone else to undertake one of their functions then that building surveyor must ensure that the person also carries out those functions in accordance with this code of practice.

6 . Breaches of this Code of Conduct

The Occupational Licensing Act 2005 gives the Administrator of Occupational Licensing powers to review the performance of licence holders.

A breach of the code may constitute improper conduct under the Act. Alternatively, a breach of some elements of the code may constitute a finding that the building surveyor is guilty of improper conduct or is not a fit and proper person to hold a building services provider licence.

There is a distinction between lesser breaches of a basic administrative nature seen as 'unsatisfactory conduct', and more serious infringements such as significant technical breaches that may compromise the safety of people in buildings, that may be judged to be 'professional misconduct'.

Breaches of the code that may constitute professional misconduct and therefore improper conduct include:

- incompetence, or a lack of adequate knowledge, skill, judgement, integrity, diligence or care in performing building surveying functions
- compromising the health or safety or a person or the amenity of a person's property
- seeking, accepting or agreeing to accept a benefit, whether for the benefit of the building surveyor or another person, as a reward or inducement to act in contravention of the legislation
- assessing building work as complying with the legislation which significantly conflicts with a local planning scheme
- repeated unsatisfactory conduct.

Repeated unsatisfactory conduct that may result in improper conduct includes:

- repeated conduct that shows incompetence, or a lack of adequate knowledge, skill, judgment, integrity, diligence or care in performing building surveying functions
- repeated conduct that is contrary to a function under the *Building Act 2016*, the *Occupational Licensing Act 2005* or another relevant Act, including, for example, disregarding relevant and appropriate matters, acting outside the scope of the building surveyor's powers, acting beyond the scope of the building surveyor's competence and contravening the code of conduct
- repeated conduct that is of a lesser standard than the standard that might reasonably be expected of the building surveyor by the public or the building surveyor's professional peers.

Breaches of the code of conduct that may lead to a building surveyor not being a fit and proper person include:

- continuing to perform the functions of a building surveyor while having a conflict of interest
- acting against the public interest
- criminal charges or convictions
- behaviour which is not consistent with the ethics expected of a building surveyor.

A person may make a complaint to the Administrator of Occupational Licensing if the person believes the building surveyor has contravened the *Occupational Licensing Act 2005* by:

- engaging in unsatisfactory conduct or professional misconduct; or
- engaging in conduct or behaviour which demonstrates they are not a fit and proper person.

If the Director of Building Control, as part of a performance audit believes that there has been professional misconduct or repeated unprofessional conduct the Director may refer the matter to the Administrator of Occupational Licensing for investigation.

7. Interpretation

“building surveyor” has the same meaning as in Section 28 of the *Building Act 2016*

“Director of Building Control” means the person appointed under Section 15 of the *Building Act 2016*

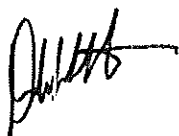
“floor area” means the sum of the sum of the areas of all storeys of a building and includes all the spaces capable of being used, including, but not limited to the roofed area, canopies, verandas and covered walkways.

“low risk work” has the same meaning as in the *Building Act 2016*

“notifiable work” has the same meaning as in the *Building Act 2016*

“performance solution” has the same meaning as in the National Construction Code

“permit work” has the same meaning as in the *Building Act 2016*



Dale Edward Webster

ADMINISTRATOR OF OCCUPATIONAL LICENSING

21 March 2018

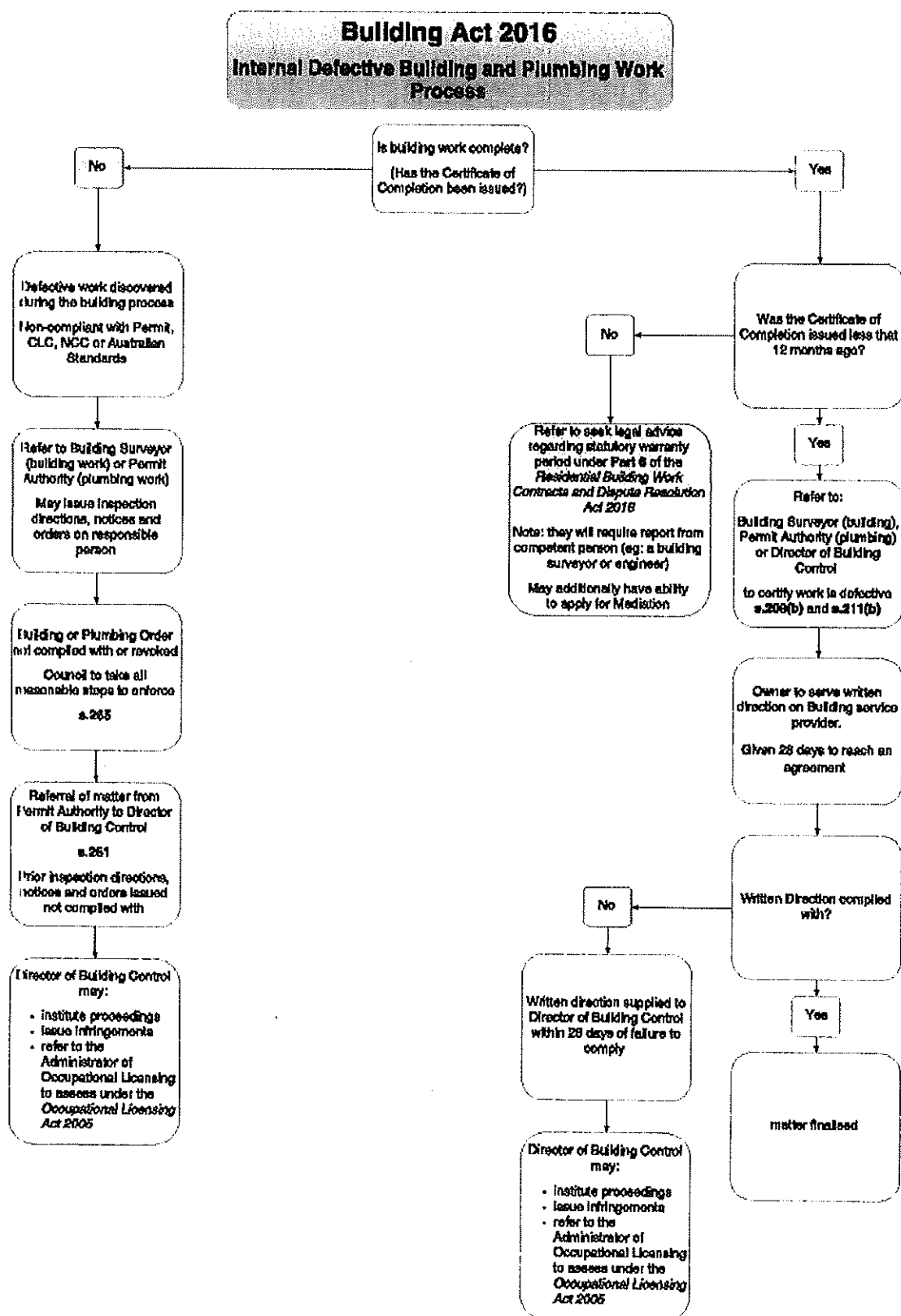
8. Explanatory Note

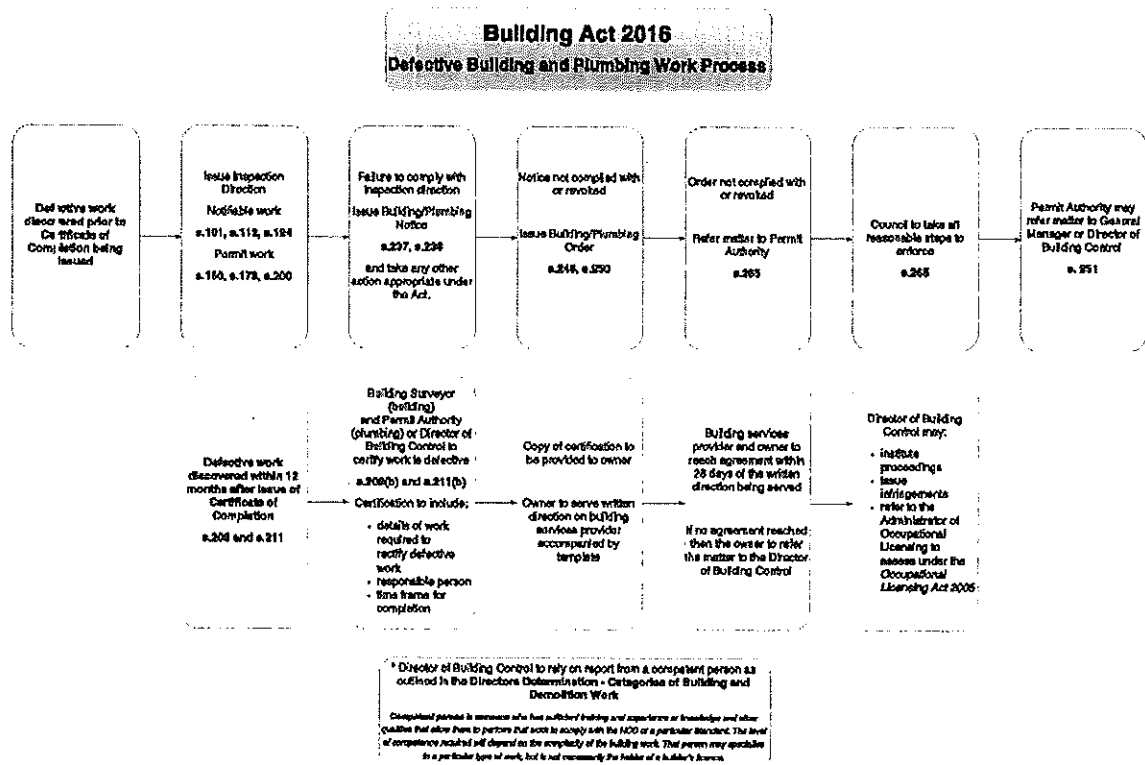
(This note is not part of the Code)

Guidance on **“floor area”** is provided in the Guide to Volume One of the National Construction Code in Section A1 (Interpretation). The guide includes a number of explanatory diagrams.

Guidance on **“performance solution”** is provided in the Guide to Volume One of the National Construction Code in Section A0 (Application) and in the Evidence Of Suitability Handbook issued by the Australian Building Codes Board and available in the Resources area of the board’s website (<https://www.abcb.gov.au/Resources>).

Appendix I – Guide to Compliance and Enforcement





H


Re: Report - 30b Old Bass Highway, Wynyard

Ryan Gilmour <ryan_gilmour@hotmail.com>

Sun 16/06/2019 11:09 PM

To: Shane Crawford <scrawford@warwyn.tas.gov.au>

Cc: Corey Gould <cgould@warwyn.tas.gov.au>; pwest@devonport.tas.gov.au <pwest@devonport.tas.gov.au>

 5 attachments (13 MB)

letter to Julie Mercer 5.4.19 sent on 10.4.19.pdf; Letter from TasWater dated 17.5.19.pdf; Letter to Sophie Rowlands - 100mm meter issue 7.6.19.pdf; email from Tas Fire - Annexure C.pdf; Letter to Shane Crawford 16.6.19.pdf;

Dear Mr Crawford,

Please find **attached** my letter to you of today's date with attachments.

Regards,

Ryan Gilmour

From: Shane Crawford <scrawford@warwyn.tas.gov.au>

Sent: Thursday, 13 June 2019 9:46 AM

To: Ryan Gilmour

Cc: Corey Gould

Subject: Report - 30b Old Bass Highway, Wynyard

Hi Ryan

We received the report from Benchmark Building Surveyors yesterday regarding the fire hose reels and hydrants at 30b Old Bass Highway, Wynyard and it is attached for your information.

Regards

Shane

Shane Crawford

General Manager

Waratah Wynyard Council

21 Saunders Street (PO Box 168)

Wynyard TAS 7325

P: (03) 6443 8300 | www.warwyn.tas.gov.au



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COUNCIL



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16 June, 2019

The General Manager
Waratah Wynyard Council

Attention: Shane Crawford

By email only: scrawford@warwyn.tas.gov.au

Dear Sir,

Taswater Dispute – 30b Old Bass Highway, Wynyard

I refer to your email of 13 June, 2019 attaching the Report from *Benchmark Building Surveyors Pty Ltd*.

I take this opportunity to address Mr Deverell's Report as well as the failure of the Council to address in writing the background surrounding the placement of the 100mm meter at 30b Old Bass Highway, Wynyard in Tasmania ("the Property") as previously requested on numerous occasions.

Mr Deverell's Report dated 12 June, 2019

Having read Mr Deverell's Report, my first thought was: I hope you have not used rate payers' money to pay for this Report yet, as in its current form, it is worth no more than the paper it is written on. Whilst harsh, the Report is devoid of any information that actually goes to the point of establishing whether the 100mm meter and connection is "...required to serve the Tourist Park", which is what the entire ambit of Mr Deverell's Report was to assess.

I have recently gone into great detail with *TasWater* explaining why they cannot charge for the 100mm meter located on the Property from a legal perspective. I now attach the following pieces of correspondence and particularly draw your attention to my letter of 7 June, 2019 as you will note it addresses all of the points that ought to have been considered by Mr Deverell:

1. Letter to *TasWater* dated 5 April, 2019
2. Letter from *TasWater* dated 17 May, 2019; and
3. Letter to *TasWater* dated 7 June, 2019.

Turning to Mr Deverell's Report, I take no issue with the scope of his Report not commenting on the issues surrounding *TasWater* and the *Waratah-Wynyard Council* involving the 100mm meter and pipeline as stated in the second paragraph of his correspondence. I also agree with the scope of his Report as stated in the first paragraph of his correspondence as:

*"...to provide a Report stating as to whether the 100mm main currently installed at 30b Old Bass Highway, Wynyard is **required** (emphasis added) to serve the Tourist Park".*

The use of the word "required" connotes a need for the Report to establish whether such infrastructure is:

- (a) Required to maintain the Property's current water requirements; and
- (b) Required by law.

Unfortunately, Mr Deverell only goes so far as to answering (a) above.

Starting from Mr Deverell's first paragraph, he states: *"The 100mm main currently services two hydrant plugs and three fire hose reels"*. Here it becomes apparent that Mr Deverell's failure to drive or walk 1500m from his office to inspect the Property has led him into error. The fire hose reels have been non operational for substantial period of time and importantly, have been condemned by *TasFire* themselves (please see pp5-8 of my letter to *TasWater* dated 7 June, 2019).

The fifth paragraph of Mr Deverell's Report is particularly interesting. Not only is my correspondence taken out of context, but Mr Deverell goes on to say:

"...I did state that for domestic uses inside the buildings a 32mm main is suitable...A 32mm main may be enough to service domestic supplies to a building, however for those collection of buildings to be installed as a Tourist Park, Council and the TFS determined that fire hose reels and hydrants were necessary".

It is necessary to rephrase the above to better understand what Mr Deverell is trying to convey in light of the question the Report is attempting to answer:

The 32mm main is sufficient for Mr & Mrs Gilmour to operate their Property unless there is a legal requirement for a 100mm meter to exist as a result of the nature of the business which includes considerations of the number of buildings that exist on the Property.

Of course, the way to establish the above is to consider the various pieces of legislation that exist that governs the need for dedicated fire fighting connections. Unfortunately, Mr Deverell does not do that. Instead he references the past tense and states that the *Waratah-Wynyard Council* and *TasFire* have determined that fire hose reels and hydrants were necessary. That is to say, Mr Deverell has given no consideration to the current legal requirements nor the historical legal requirements, instead, without any documentary evidence, relying on the mere fact that such infrastructure exists as evidence of the infrastructure being required historically and into the future. Such a statement is illogical to say the least, but more troublingly gives no consideration whatsoever to the legalities surrounding the issue. To this I refer you again to my letter to *TasWater* dated 7 June, 2019 whereupon I cover the legislation surrounding fire protection for the Property in detail.

In Paragraph 6 of the Mr Deverell's Report he attempts to give consideration to the legalities around by referencing *AS1851-2012 Routine Service of Fire Protection Systems* and stating that Mr & Mrs Gilmour need to maintain this systems whereupon they are to be tested every six months. The failure of Mr Deverell to consider the legalities from the outset has led him into error here as *AS1851-2012* has no application in this instance.

For *AS1851-2012 Routine Service of Fire Protection Systems* to have application the Property, there first needs to be legal requirement for such infrastructure to be in place and remain in place at first instance. For the reasons stated in my letter to *TasWater* dated 7 June, 2019 there is no requirement for the Property to have this infrastructure in place, hence there is no ongoing requirement for maintenance and inspections of same. If you or Mr Deverell question this, you may wish to ask yourself why *TasFire* would have condemned such equipment and then not required it to be replaced or otherwise made operational by Mr & Mrs Gilmour. Furthermore, if the *General Fire Regulations 2010* had some application to the Property insofar as the 100mm connection is concerned (and by referencing *AS1851-2012* he must be), you may question why the various penalty provisions therein have not been acted upon.

The 7th paragraph of Mr Deverell's Report refers to Mr Whiteway on behalf of *TasFire* not supporting the removal of the fire hose reels and hydrants (although I suspect he means the 100mm connection as a whole given ambit of the Report). Reference is made to a comment of Mr Whiteway on 13 March, 2019. I infer this is the email Mr Whiteway sent to Mr Deverell on 13 March, 2019 at 2:34pm. I take this opportunity to **attach** this correspondence as it is not included in Mr Deverell's Report.

The problem with the above, is that Mr Deverell has lost sight of the original question he sought to answer in the first paragraph of his Report. Whether or not *TasFire* support the removal of this infrastructure is of no concern if it is not required by law to exist. *TasFire* are not a dictatorship. Their role is to apply the legislation to each unique scenario, and in this case, to determine the fire safety requirements of the Property in accordance with the law. They are, like Council, a creature of statute. If this were not the case, they could demand that you install a 100mm connection to your private residence, install fire hoses and hydrants on your property along with an internal sprinkler system for added safety, irrespective of what legislation requires.

The only applicable comment of Mr Whiteway from his email of 13 March, 2019 is his reference: "*Although not a requirement of the NCC ...*". My analysis of the relevant legislation draws this same conclusion. That is:

- (a) The 100mm connection and associated infrastructure is not required for the Property under the *National Construction Code* ("NCC");
- (b) The *General Fire Regulations 2010* are not applicable as the structures on the Property are neither a "prescribed building" nor a "specified building" (see regulations 4 & 5 therein).

If you look at the interaction between the NCC and the *General Fire Regulations 2010*, particularly regulations 4 & 5 therein, you will appreciate that those abovementioned 7 words of Mr Whiteway answered the question raised by Mr Deverell at the outset of his Report. That is, there is no requirement for the Property to be serviced by a 100mm connection. There is a clear distinction between whether a piece of infrastructure is 'required' and whether a government body offers their support for its removal. The latter of course has no impact on the former as a matter of law.

Finally, notwithstanding the above, Mr Deverell has also confused the original question which he set out to answer in his first paragraph, by coming to his conclusion in his final paragraph that:

"I will not go against the advice provided by the TFS that these FHRs and hydrants must remain whilst the Tourist Park is in operation".

If the general thoughts of *TasFire* were the only concern, then there would have been no need to appoint Mr Deverell in the first place. The dispute Mr & Mrs Gilmour are having, as you are aware, is due to being charged for the unlawful placement of the 100mm meter on their Property back in or around 2003. Insofar as Mr Deverell is concerned, whether the 100mm connection is 'required' is distinct from whether it must be 'removed'. The two are not mutually exclusive outcomes. That is to say, a finding by Mr Deverell that the 100mm connection is not required does not in and of itself mean it must be removed. The failure of Mr Deverell to recognise this fact is troubling as it has led him astray throughout the Report and ultimately in his conclusion itself. To this end, I direct you to the options put forward to *TasWater* on behalf of Mr & Mrs Gilmour in my letter to same dated 7 June, 2019.

I fully appreciate that Mr Deverell is not a lawyer, but the task he was engaged to undertake does require him to have some understanding of the legislation surrounding the installation of fire equipment in certain commercial contexts, and quite frankly, I would expect a surveyor to have such basic knowledge. The fact he was happy to accept your approach to provide advice on this issue suggests that he believes he is appropriately qualified, but hopefully you can appreciate from the above, that his effort to date does not evidence same.

Failure to Address the unlawful placement of the 100mm meter on the Property

I refer to the following:

1. My email to you on 15 April, 2019 attaching a letter from me of even date;
2. My email to you on 3 May, 2019;
3. Your email to me on 9 May, 2019;
4. My email to you on 20 May, 2019; and
5. Your email to me on 21 May, 2019.

You will recall from the above I have consistently requested your input as General Manager of the *Waratah-Wynyard Council* to provide written correspondence to *TasWater* addressing the facts from the perspective of the *Waratah-Wynyard Council* prior to 2009 insofar as the 100mm meter is concerned. Aware of the fact you are no doubt incredibly busy, I even went so far as to writing out two various options of wording you could simply copy and paste and forward to *TasWater* on Mr & Mrs Gilmour's behalf. You will recall I placed this in both my letter of 15 April, 2019 and later in my email of 20 May, 2019. I replicate this wording below:

- "(i) That from 1999 until the passing of the Water and Sewerage Corporation Act 2008 and subsequent transfer of Council owned water and sewerage assets to the entity Cradle Mountain Water in 2009, the Waratah-Wynyard Council did not charge Mr & Mrs Gilmour as owners of the Property for the 100mm water main and associated pipeline;*
- (ii) That the Waratah-Wynyard Council did not consult nor request at any time the owners of the Property, Mr & Mrs Gilmour, to formally agree that they were prepared to accept ownership and future responsibility for the 100mm water main within the Property as it ought to have done in accordance with the recommendation and subsequent resolution passed by the Waratah-Wynyard Council at its Meeting of Council held on 17 November 2003 and referred to in the minutes therein; OR*
- (iii) That the Waratah-Wynyard Council has no record of the owners of the Property, Mr & Mrs Gilmour, being either approached or agreeing formally or otherwise that they are prepared to accept ownership and future responsibility for the 100mm water main within the Property as it ought to have done in accordance with the recommendation and subsequent resolution passed by the Waratah-Wynyard Council at its Meeting of Council held on 17 November 2003 and referred to in the minutes therein."*

As pointed out to you in my email of 20 May, 2019, the above points are not controversial. They are facts which you can easily satisfy yourself of if you are not already satisfied of same.

You informed me in your email to me on 21 May, 2019 that you would contact Juliet Mercer at *TasWater* the following day and follow up the conversation in writing. I have heard nothing from

you since then on this topic, and thus assume you have neither contacted her nor drafted anything relating to the above.

I am having difficulty understanding why such a simple request has been ignored to date. In light of Mr Deverell's Report and combined with this apparent inaction to confirm the facts surrounding the placement of the 100mm meter on the Property, the sceptic in me questions whether you may be actively working against your rate payers Mr & Mrs Gilmour. Of course this would be at odds with s20 of the *Local Government Act 1993* as well as your *Customer Service Charter*. Thankfully, I am not quick to lay judgment and hence I wish to work cooperatively with you moving forward, starting with my request that you attend to the following:

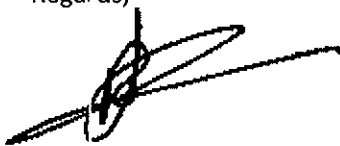
1. That you reengage Mr Deverell or an alternative appropriately qualified surveyor (preferably one that I have first approved on behalf of Mr & Mrs Gilmour) to carry out the task that was requested at first instance;
2. That you provide me with a date and time to meet with you and Mayor Robbie Walsh at your office to discuss the issues surrounding the 100mm meter and Mr Deverell's Report.
3. That you provide me with a copy of draft correspondence you are prepared to provide to *TasWater* that addresses the above in advance of the scheduled meeting.

I have requested that Mr Robbie Walsh be present at the meeting as he is as far as I am aware, the Council appointed representative who sits on the Owners' Representative Group of *TasWater*. He therefore needs to be brought into this discussion. If you have recently appointed an alternative representative then I request their presence in lieu of Mr Walsh.

Please note that I will be in the south of the State from 16 to 27 June, 2019 and thus will be unavailable during this short period. I will however be available at all other times thereafter to attend a meeting with yourself and Mr Walsh.

I look forward to hearing from you.

Regards,



Ryan Gilmour

CC: Corey Gould
cgould@warwyn.tas.gov.au

General Manager
Devonport Council
pwest@devonport.tas.gov.au

1


Your Report on the 100mm main at 30b Old Bass Hwy, Wynyard, TAS

Ryan Gilmour <ryan_gilmour@hotmail.com>

Sun 16/06/2019 11:22 PM

To: Stefan Deverell <stefan@benchmarkbuildingsurveyors.com.au>

Cc: Shane Crawford <scrawford@warwyn.tas.gov.au>; Corey Gould <cgould@warwyn.tas.gov.au>;
pwest@devonport.tas.gov.au <pwest@devonport.tas.gov.au>

 1 attachments (1 MB)

Letter to Stefan Deverell 16.6.19.pdf;

Dear Mr Deverell,

I refer to your Report relating to the above dated 12 June, 2019.

I **attach** correspondence to you.

Regards,
Ryan Gilmour



Virus-free. www.avast.com

16 June, 2019

Stefan Deverell
Benchmark Building Surveyors Pty Ltd

By email only: stefan@benchmarkbuildingsurveyors.com.au

Dear Sir,

100mm Meter Report – 30b Old Bass Highway, Wynyard, TAS

I refer to your Report addressed to Mr Shane Crawford and dated 12 June, 2019 concerning 30b Old Bass Highway, Wynyard in Tasmania ("the Property").

Having now had an opportunity to consider the Report, there are some deficiencies that need to be pointed out as they have unfortunately led you to an incorrect conclusion and require rectification.

I agree with the scope of your Report as stated in the first paragraph of your correspondence as:

*"...to provide a Report stating as to whether the 100mm main currently installed at 30b Old Bass Highway, Wynyard is **required** (emphasis added) to serve the Tourist Park".*

The use of the word "required" connotes a need for the Report to establish whether such infrastructure is:

- (a) Required to maintain the Property's current water requirements; and
- (b) Required by law.

Unfortunately, as it currently stands, your Report only answers question (a) above.

Starting at your first paragraph, you state: *"The 100mm main currently services two hydrant plugs and three fire hose reels"*. Later on in your Report you refer to having been told that the fire hose reels are now disused, but as you did not inspect the Property, you may not be aware that they have in fact been condemned by *TasFire* themselves. Furthermore no inspections have been carried out on such infrastructure by *TasFire* for many years, Mr & Mrs Gilmour have never received a demand to make the fire hose reels operational and neither have they been fined or threatened of fines which you will know are available and readily used under the *General Fire Regulations 2010*. This fact alone ought to have given you a good idea as to where the law stands on this issue before examining matters any further, but this will become clearer further in this correspondence. For your information I provide photographs of one of the condemned fire hose reels below:

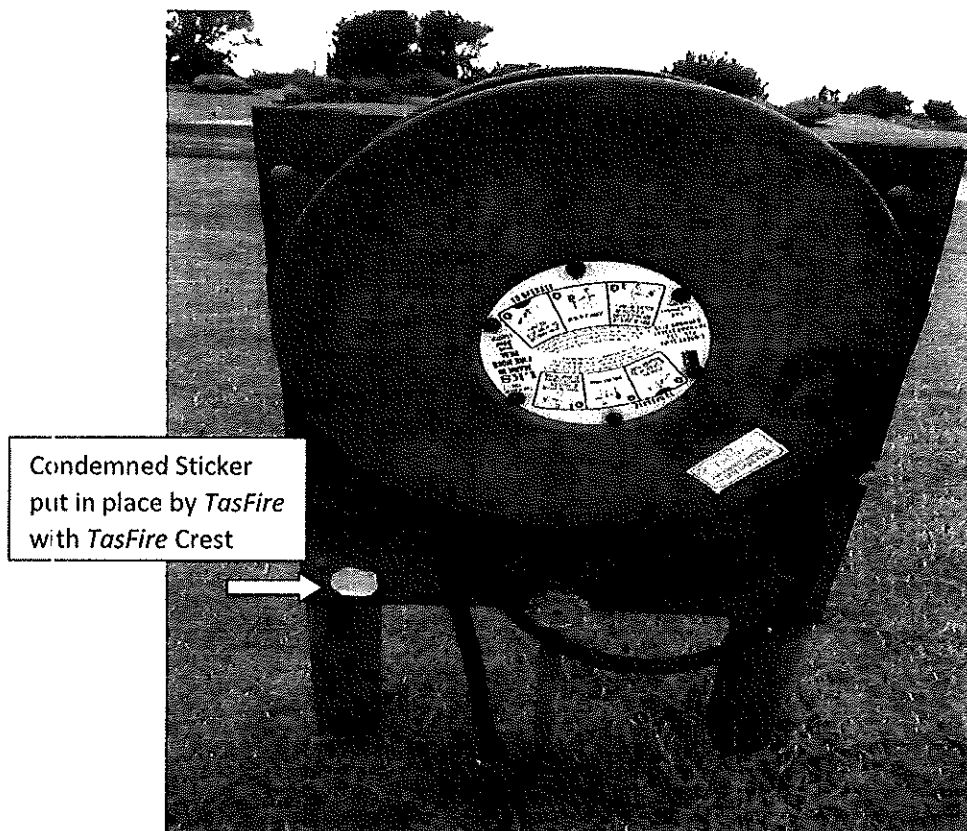


Image 1: Fire hose reel condemned by TasFire with their own stickers placed on reel

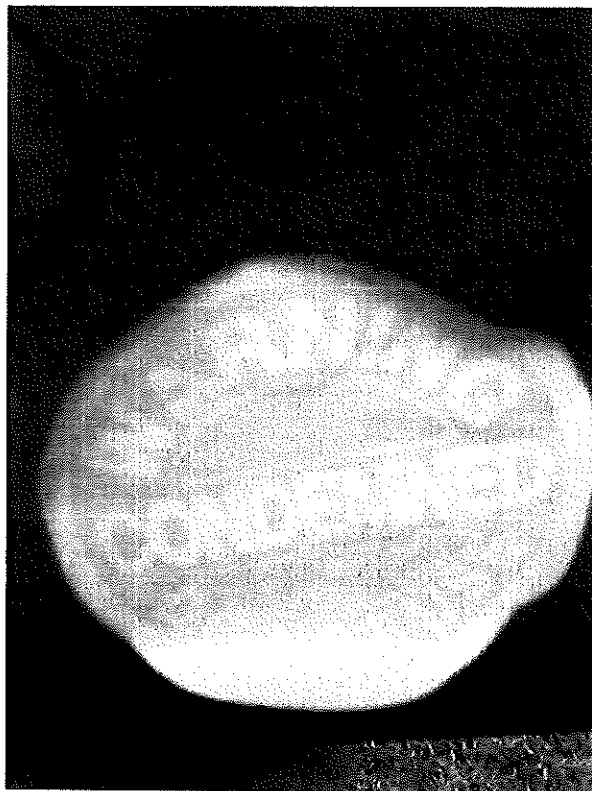


Image 2: Close up of TasFire "condemned" sticker placed on the fire hose reel.

The fifth paragraph of your Report I found particularly interesting. You note:

"...I did state that for domestic uses inside the buildings a 32mm main is suitable...A 32mm main may be enough to service domestic supplies to a building, however for those collection of buildings to be installed as a Tourist Park, Council and the TFS determined that fire hose reels and hydrants were necessary".

It is necessary for me to rephrase the above to better understand what you wish to convey from the above in light of the original question you set out to answer. I rephrase same as follows:

The 32mm main is sufficient for Mr & Mrs Gilmour to operate their Property unless there is a legal requirement for a 100mm meter to exist as a result of the nature of the business which includes considerations of the number of buildings that exist on the Property.

Of course, the way to establish the above is to consider the various pieces of legislation that exist that govern the need for dedicated fire fighting connections. Unfortunately, you have not done that, instead you reference the past tense and state that the *Waratah-Wynyard Council* and *TasFire* have determined that fire hose reels and hydrants were necessary. That is to say, you have given no consideration to the current legal requirements nor the historical legal requirements, instead, without any documentary evidence, relied on the mere fact that such infrastructure exists as evidence of the infrastructure being required historically, at present and into the future. Such a statement is illogical to say the least, but more troublingly gives no consideration whatsoever to the legalities surrounding the issue, which is after all what you set out to establish.

The starting point before any consideration is given to Australian Standards is to consider whether legislation requires as a matter of law that a 100mm main for the Property exist in order to trade as a Tourist Park in its current set up. You then have the separate and distinct issue of the fire hose reels and whether they are legally required on the Property to trade as a Tourist Park in its current set up. This is a distinct issue as it firstly is not a question you needed to answer to address the ambit of your Report as outlined in your first paragraph, and secondly, fire hose reels do not necessarily need to be connected to a 100mm main for them to operate. This confusion between what you set out to establish and what you address throughout the report to draw a conclusion is part of the problem.

The two primary pieces of legislation that govern matters such as this are the *Fire Services Act 1979* and the *General Fire Regulations 2010*. The latter piece of legislation is particularly significant to this scenario.

Regulations 4 and 5 of the *General Fire Regulations 2010* outline what constitutes a "prescribed building" and "specified building" respectively. Through regulation 4, you are referred back to the various building classes within *Building Code of Australia* ("BCA"). As you are well aware, the *BCA* volumes 1 and 2 along with the *Plumbing Code of Australia* volume 3 constitutes the *National Construction Code* ("NCC").

Feel free to inspect the NCC yourself, but you will not find a requirement within it for a Tourist Park with the accommodation provided by Mr & Mrs Gilmour to be serviced by a 100mm main for fire fighting purposes or at all. Interestingly, the question you never set out to answer but decided to answer all the same, namely whether fire hose reels and hydrants are required by law was answered at the outset by Mr Whiteway of *TasFire* in his email to you on 13 March, 2019. Indeed the only directly relevant part of his email were his words *"Although not a requirement of the NCC ..."* which

were made in direct relation to whether hydrants and fire hose reels are a requirement for the Property in its current form.

With the above established, you will note that the Property and no structure within the Property can be classified as a "prescribed building" under the *General Fire Regulations 2010*.

The next step is to consider regulation 5 under the *General Fire Regulations 2010*. By cross referencing the various types of structures listed in this provision with those in place on the Property, you will come to the conclusion that the Property and no structure within the Property can be classified as a "specified building" under these regulations.

With the above established, you will note that as result of:

- (a) The building controls (that is the NCC) not requiring a 100mm main on the Property;
- (b) The building controls (that is the NCC) not requiring fire hydrants and fire hose reels to be connected to a 100mm main (or at all) on the Property; and
- (c) The Property and no structure within the Property being classified as either a "prescribed building" or "specified building"

The *General Fire Regulations 2010* has no application to the Property.

Therefore the reference you make to *AS1851-2012 Routine Service of Fire Protection Systems* is of no consequence given the *General Fire Regulations 2010* has no application to the Property. I trust you can now appreciate why *TasFire* themselves had no issue condemning the fire hose reels, not requiring any maintenance to be carried on same and not carrying out any ongoing inspections of infrastructure that taps into the 100mm main.

You mention in your Report a number of irrelevant matters in drawing your conclusion, including:

- (a) Assuming that the fire hose reels and hydrant plugs were a requirement for some historical planning permit issued before Mr & Mrs Gilmour purchased the Property in 1999;
- (b) That fire hydrants and fire hose reels are common for Tourist Parks (although the question you set out to answer related to the 100mm main); and
- (c) That Mr Whiteway of *TasFire* does not support the removal of the fire hose reels or hydrants.

I trust that you appreciate, as a matter of law, why the comments you made above ought to have been of no consequence in coming to your ultimate decision. At best, *TasFire's* lack of support for the removal of the fire hose reels and hydrants is worth a mention as an aside, for if the general thoughts of *TasFire* were the only (or main) concern, then there would have been no need to have you appointed to provide an expert report at first instance.

Insofar as you ought to have been concerned, whether the 100mm connection is 'required' is distinct from whether it must be 'removed'. The two are not mutually exclusive outcomes. That is to say, a finding by you that the 100mm connection is not required does not in and of itself mean it must be removed. The failure to recognise this fact has also tainted your ultimate conclusion.

The overarching point to be taken from the above is to understand that *TasFire* is a creature of statute and thus not a dictatorship. The question you set out to answer in the first paragraph of your Report can only be answered by applying the relevant legislation to the unique scenario

presented to you in the form of the Property. If you go through the process, as I have done above, the only conclusion you can come to is:

1. That the 32mm connection is sufficient to service the water requirements of the Property (I note you came to this conclusion);
2. That there is no legal requirement for the Property to be serviced by a 100mm main; and
3. That there is no legal requirement for the Property to be serviced by fire hose reels and hydrants.

With the above now stated, I now request that you review and redraft your Report so that it answers the question *"...whether the 100mm main currently installed at 30b Old Bass Highway, Wynyard is required to serve the Tourist Park"* in accordance with the relevant legislation.

Finally, whilst you may view this as me telling you how to do your job, you must appreciate that I am now involved in assisting Mr & Mrs Gilmour address the issues surrounding the 100mm connection as a result of a protracted history of various parties failing to perform their job or otherwise accord with the law. Whilst I fully appreciate you need not know about nor comment on any such dispute, as an expert in your area and by agreeing to provide a report on the issue above, it is imperative you provide the type of expert analysis expected of such a professional.

I look forward to receiving your amended Report in due course.

Regards,



Ryan Gilmour

CC: Shane Crawford
scrawford@warwyn.tas.gov.au

Corey Gould
cgould@warwyn.tas.gov.au

General Manager
Devonport Council
pwest@devonport.tas.gov.au

"J" T/T - Wanda Wyzal Counsel

27/6/19

ph: 6443 8383

2:12

Steve Cogswell

sent ^{email} about on

16/6/19

2:15

hi: Ryan - not answering his phone
ph: - left msg with "Anne" who said took my
number and said she would get him
to call me back by sending him an
email.

T/T - Stefan Deverell

27/6/19

ph: 6442 4192

2:18

- said shipped my letter
- not redrafting it as Council haven't asked him to.
- said may redraft it but would need Council to request it.

2:20

K

Re: Report - 30b Old Bass Highway, Wynyard

Ryan Gilmour <ryan_gilmour@hotmail.com>

Fri 28/06/2019 3:37 PM

To: Shane Crawford <scrawford@warwyn.tas.gov.au>

Hi Shane,

That sounds good. I will attend your office at 9am on Tuesday 2 July, 2019.

Regards,

Ryan Gilmour

From: Shane Crawford <scrawford@warwyn.tas.gov.au>

Sent: Friday, 28 June 2019 2:25 PM

To: Ryan Gilmour

Subject: RE: Report - 30b Old Bass Highway, Wynyard

Hi Ryan

I note your request to meet with Mayor Walsh and myself and state that we would be available at 9am on Tuesday 2 July at the Council offices should that suit.

Please let me know.

Regards

Shane

Shane Crawford

General Manager

Waratah Wynyard Council

21 Saunders Street (PO Box 168)

Wynyard TAS 7325

P: (03) 6443 8300 | www.warwyn.tas.gov.au



WARATAH WYNYARD
COUNCIL

From: Ryan Gilmour <ryan_gilmour@hotmail.com>

Sent: Sunday, 16 June 2019 11:09 PM

To: Shane Crawford <scrawford@warwyn.tas.gov.au>

Cc: Corey Gould <cgould@warwyn.tas.gov.au>; pwest@devonport.tas.gov.au

Subject: Re: Report - 30b Old Bass Highway, Wynyard

Dear Mr Crawford,

Please find **attached** my letter to you of today's date with attachments.

Regards,

" C "

AGENDA – MEETING WITH Shane Crawford & Robbie Walsh at Council
Chambers on 2 July, 2019 at 9am

Greg Barker
Mayor of Enniscorthy *James*

Issues to Discuss

16 June 2019
Letter to J. Walsh

Wanted to get both yourself Shane and Robbie as you are as I understand the Council appointed representative on the Owners Representative Group of TasWater.

100mm meter issue

- Purchased by Graeme and Cheryl in 1999. Before that was a council park
- Permits were perhaps lax or non existent and as a result, infrastructure was built over rising sewer main for the township of Wynyard.
- Issue raised its head in 2003 as a result of Graeme and Cheryl submitting plans for some development work on the property. No doubt as a result of looking at the location of infrastructure relative to the rising main, realised that historically, errors had been made such that no choice but to reroute the rising main at council's expense.
- During mr and mrs gilmour's discussions with council surrounding their development and the rising main issue there was a meeting between Mr Kennedy (director development services), paul west (former GM), and evan pardon on 3 November 2003 and Graeme and Cheryl. That is almost 2 weeks before the council meeting. At that meeting the 100mm meter issue was discussed and it was agreed that the 100mm main would be removed from the property. Know this to be the case, as Graeme and Cheryl followed this up with a letter to Mr Kennedy addressing this point. (show letter)
- About 2 weeks later . 17 November, 2019, Council determined at their meeting, they would move the rising sewer main from the property.
- During the same council meeting (17 November, 2003) determined to request the owners of 30b old bass hwy to formally agree that they are prepared to accept ownership and future responsibility for the 100mm water main.
- So against the agreement purportedly reached on 5 November, 2003 the council determined it would still go ahead and try get the formal consent from Graeme and Cheryl to place the 100mm meter on the property and transfer ownership of same on 17 November, 2003.
- This may seem trivial. But makes a big difference to this matter. as now trying to collect money for fixed fees due to the 100mm main being placed on the property. The issue is, if you commit a trespass, that is an unlawful act, you cannot then sue upon such an unlawful act.

What am I asking for council.

2 things:

- (a) Stated it several times, and restated it at p4 of my letter dated 16 June, 2019. (go to letter). Just asking you to state facts as you understand them to be.
- There is no liability issue from your perspective because Part 3 (s28 and 30) of the *Water and Sewerage Corporation Act 2012* provides for the vesting of assets and liabilities from

transferor to transferee (so that is, any liability you had has transferred to cradle mountain water and now taswater).

- Will you put what I have asked in writing, addressed to TasWater.

We met on 8 February, 2019 it was agreed you would engage a surveyor to provide a report on whether the 100mm meter was required to serve the tourist park.

- You engaged Mr Stefan Deverell who provided his report dated 12 June, 2019.
- It didn't do the type of analysis that ought to have been done and didn't answer the question.
- Such a request is akin to somebody walking into his office with a development plan and asking for him to advise of what sort of water infrastructure is required to service the property and to meet fire legislation. He never considered any legislation.
- Re-engage him to redo his report, or if he doesn't have the level of competency, need to engage someone else.

2 Other Issues with TasWater

1. ET Dispute (8 to 24 ETs....3 fold)
2. Excess Water charges

Whilst I have you here.

I would like to go into some detail here, as it seems to me as the nominated person on the owners representative group, you may be able to talk some sense into taswater on these issue, to get a resolution.

Tushy next week -o

Stefan Deverell Report

Ryan Gilmour <ryan_gilmour@hotmail.com>

Fri 5/07/2019 2:43 PM

To: Corey Gould <cgould@warwyn.tas.gov.au>

Cc: scrawford@warwyn.tas.gov.au <scrawford@warwyn.tas.gov.au>

Dear Corey,

Thank you for meeting with myself and Mr & Mrs Gilmour on Tuesday.

As discussed at the meeting, I see there are two matters the Council ought to attend to in order to resolve the ongoing 100mm water meter issue with your office, namely:

1. Have the General Manager write to me confirming the history of the 100mm meter, moreover the fact that there was never any formal agreement for the placement of the meter on the property in line with previous correspondence to Mr Crawford; and
2. That Mr Deverell be contacted and requested to amend his report to give consideration to the legislation that governs the matter to make a determination as to whether the 100mm meter is required.

In stating the above, I note that you are the direct point of contact with Mr Deverell and that during my phone attendance with Mr Deverell on 27 June, 2019, he confirmed he had received my correspondence and would be prepared to look at his report again, but that the request for same would need to come from your office. I ask that if you have not done so already, you please contact Mr Deverell and request that he review and amend his report dated 12 June, 2019 so that it adequately addresses the question he set out to answer in his opening paragraph. That is, whether the "...100mm main currently installed at 30b Old Bass Highway, Wynyard is required to serve the Tourist Park".

I note that during the meeting on Tuesday, Mr Crawford indicated that as far as he was concerned, Mr Deverell and the Council had fulfilled their obligation by the creation of the aforementioned report. This statement was troubling, as at a minimum, an expert engaged to prepare advice is required to meet the standard of the reasonably competent and qualified expert in that field. For the reasons stated in my letter to Mr Crawford and emailed to you dated 16 June, 2019, it ought now (if it wasn't already previously) be obvious that Mr Deverell's report falls far short of that standard.

Once you have received the amended report, I ask that you forward the report directly to me and no other persons. I note that previously you (or somebody else at the Council) forwarded Mr Deverell's report to TasWater. As you are aware or ought to have been aware, there was an agreement reached for your office to request and obtain a report from a surveyor for Mr & Mrs Gilmour. There was no consent given for you to forward such a privileged document to a third party. Please do not breach this agreement again.

So that you are fully apprised of my thoughts on this matter, if you neglect to reengage Mr Deverell to undertake the task he was required to undertake at first instance, I will engage a qualified and competent surveyor to undertake the same analysis and to make comment on Mr Deverell's report. If the report comes back confirming my thoughts on Mr Deverell's report (as I know it will) I will be seeking full reimbursement from your office of those out of pocket expenses incurred on the grounds of breach of contract, as clearly what has been done to date falls short of the agreement reached between Mr & Mrs Gilmour, Mr Crawford and Mr West back on 8 February, 2019. I trust it will not come to this.

I look forward to hearing from you with an update and confirming that Mr Deverell has been requested to review and amend his report to take into account the legislation that governs the issue

in order to answer the question at hand.

Regards,
Ryan Gilmour

" N "

RE: Stefan Deverell Report

Corey Gould <cgould@warwyn.tas.gov.au>

Thu 18/07/2019 9:35 A.M

To: Ryan Gilmour <ryan_gilmour@hotmail.com>

Cc: Shane Crawford <scrawford@warwyn.tas.gov.au>; Daniel Summers <dsummers@warwyn.tas.gov.au>

Thanks Ryan,

I acknowledge receipt of your e-mail.

I can confirm that Council has fulfilled its obligation by commissioning Mr. Deverell to provide a building surveyors report in regards to your matter and that Council, as the commissioning agent, is satisfied with the findings of said report.

You are well within your rights to engage an alternative building surveyor to review these findings should you deem necessary, however this review will not be commissioned by Council, nor will Council accept any liability for expenses associated with this review.

I trust this matter is now resolved.

Regards,

Corey Gould

Manager Engineering Services

Waratah-Wynyard and Circular Head Councils

Phone: (03) 6443 8360

Email: cgould@warwyn.tas.gov.au



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Smithton was named winner of the 2018 Australian Tidy Towns Award.

This award recognises both a care for the environment, and the community's care and support for each other.



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From: Ryan Gilmour <ryan_gilmour@hotmail.com>

Sent: Tuesday, 16 July 2019 1:22 PM

To: Corey Gould <cgould@warwyn.tas.gov.au>

Subject: RE: Stefan Deverell Report

Thanks Corey,

The fact you/Council find the report from Mr Deverell satisfactory is troubling to say the least.

Once we have our own Surveyor report on the matter (who will no doubt actually consider the law that applies regarding fire fighting connections) I will send you the account in order for the Council to arrange reimbursement for same.

Regards,

Ryan Gilmour

From: Corey Gould <cgould@warwyn.tas.gov.au>

Sent: Friday, 12 July 2019 4:58 PM

To: Ryan Gilmour

Cc: Shane Crawford

Subject: RE: Stefan Deverell Report

Hi Ryan,

I have contacted Mr Deverell to discuss the matter, at this stage both Council and Mr Deverell are satisfied with the findings of the original report and will not be seeking to pursue the matter further.

Regards,

Corey Gould

Manager Engineering Services

Waratah-Wynyard and Circular Head Councils

Phone: (03) 6443 8360

Email: cgould@warwyn.tas.gov.au



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DX 70479

Smithton was named winner of the 2018 Australian Tidy Towns Award.

This award recognised both a care for the environment, and the community's care and support for each other.



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From: Ryan Gilmour <ryan_gilmour@hotmail.com>
Sent: Friday, 5 July 2019 2:43 PM
To: Corey Gould <cgould@warwyn.tas.gov.au>
Cc: Shane Crawford <scrawford@warwyn.tas.gov.au>
Subject: Stefan Deverell Report

Dear Corey,

Thank you for meeting with myself and Mr & Mrs Gilmour on Tuesday.

As discussed at the meeting, I see there are two matters the Council ought to attend to in order to resolve the ongoing 100mm water meter issue with your office, namely:

1. Have the General Manager write to me confirming the history of the 100mm meter, moreover the fact that there was never any formal agreement for the placement of the meter on the property in line with previous correspondence to Mr Crawford; and
2. That Mr Deverell be contacted and requested to amend his report to give consideration to the legislation that governs the matter to make a determination as to whether the 100mm meter is required.

In stating the above, I note that you are the direct point of contact with Mr Deverell and that during my phone attendance with Mr Deverell on 27 June, 2019, he confirmed he had received my correspondence and would be prepared to look at his report again, but that the request for same would need to come from your office. I ask that if you have not done so already, you please contact Mr Deverell and request that he review and amend his report dated 12 June, 2019 so that it adequately addresses the question he set out to answer in his opening paragraph. That is, whether the "...100mm main currently installed at 30b Old Bass Highway, Wynyard is required to serve the Tourist Park".

I note that during the meeting on Tuesday, Mr Crawford indicated that as far as he was concerned, Mr Deverell and the Council had fulfilled their obligation by the creation of the aforementioned report. This statement was troubling, as at a minimum, an expert engaged to prepare advice is required to meet the standard of the reasonably competent and qualified expert in that field. For the reasons stated in my letter to Mr Crawford and emailed to you dated 16 June, 2019, it ought now (if it wasn't already previously) be obvious that Mr Deverell's report falls far short of that standard.

Once you have received the amended report, I ask that you forward the report directly to me and no other persons. I note that previously you (or somebody else at the Council) forwarded Mr Deverell's report to TasWater. As you are aware or ought to have been aware, there was an agreement reached for your office to request and obtain a report from a surveyor for Mr & Mrs Gilmour. There was no consent given for you to forward such a privileged document to a third party. Please do not breach this agreement again.

So that you are fully apprised of my thoughts on this matter, if you neglect to reengage Mr Deverell to undertake the task he was required to undertake at first instance, I will engage a qualified and competent surveyor to undertake the same analysis and to make comment on Mr Deverell's report. If the report comes back confirming my thoughts on Mr Deverell's report (as I know it will) I will be seeking full reimbursement from your office of those out of pocket expenses incurred on the grounds of breach of contract, as clearly what has been done to date falls short of the agreement reached between Mr & Mrs Gilmour, Mr Crawford and Mr West back on 8 February, 2019. I trust it will not come to this.

I look forward to hearing from you with an update and confirming that Mr Deverell has been requested to review and amend his report to take into account the legislation that governs the issue in order to answer the question at hand.

Regards,
Ryan Gilmour



1. SCOPE

- 1.1 This Policy applies to all employees, elected members and contractors of the Council.
- 1.2 This Policy covers personal information that is collected, retained, stored and used by Council where it is necessary for one or more of Council's functions or activities.
- 1.3 'Personal information' may be defined as:

information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

It is, basically, any information that can be used to identify an individual.

Examples of personal information held by the Council include information relating to individual properties and property owners, names of complainants and objectors, dog registration information, rates and charges information and sensitive information relating to insurance claims and health and immunisation records.

2. PURPOSE

- 2.1 This Policy sets out Council's approach to managing, handling and protecting the personal information of customers.

3. POLICY STATEMENT

- 3.1 Council is committed to upholding the right to privacy of all individuals who have business dealings with the Council. The Council will take the necessary steps to ensure that the personal information that customers share with us remains confidential.
- 3.2 This Policy will also serve to regulate Council procedures in relation to the handling of personal information.

Legislative Requirements –

- *Local Government Act 1993* (Tasmania)
- *Archives Act 1983* (Tasmania)
- *Privacy Act 1988* (Commonwealth)

Related Procedures/Guidelines:

- GOV.006.1 - Privacy Policy Guidelines

DOC NO: GOV.006	VERSION NO: 3	APPROVAL DATE: 15 October 2018
CONTROLLER: General Manager	APPROVED BY: - COUNCIL	REVIEW DATE: October 2022



1.0 Purpose

- 1.1 This Guideline sets out Council's approach to managing, handling and protecting the personal information of customers.
- 1.2 Council is committed to upholding the right to privacy of all individuals who have business dealings with the Council. The Council will take the necessary steps to ensure that the personal information that customers share with us remains confidential.
- 1.3 This Guideline will also serve to regulate Council procedures in relation to the handling of personal information.

2.0 Objective

- 2.1 The objective of this Guideline is to provide guidance to Council staff, elected members and contractors in relation to the handling of personal information.

3.0 Scope

- 3.1 This Guideline applies to all employees, elected members and contractors of the Council.
- 3.2 This Guideline covers personal information that is collected, retained, stored and used by Council where it is necessary for one or more of Council's functions or activities.

4.0 Policy

4.1 Collection of Personal Information

- 4.1.1 It is Council's Policy to collect personal information only if it is necessary for one or more of Council's functions or activities or in order to comply with State or Federal laws or regulations.
- 4.1.2 Whenever Council collects personal information, the information and the reasons for its collection will be shared with customers upon request. Requests of this nature are to be forwarded to Council's Privacy Officer.
- 4.1.3 Council will only use personal information for the purposes for which it was collected and for any other use authorised or required by law, including law enforcement and compliance activities.

DOC NO: GOV.006.1	VERSION NO: 1	APPROVAL DATE: 15 October 20180
CONTROLLER: General Manager	APPROVED BY: - COUNCIL	REVIEW DATE: October 2022



PRIVACY POLICY GUIDELINES

4.1.4 The Privacy Guideline will be made available on Council's web site and copies of a summary of the Policy, to be titled "Privacy Statement", will be made available at each of Council's Customer Service centres.

4.1.5 *Sensitive* information shall not be collected without express consent and unless the collection of such information is required by law. Sensitive information may include information or opinion about an individual's racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual preferences or practices, criminal record, health information or financial status.

4.2 Use and Disclosure

4.2.1 It is Council's Guideline that personal information will not be divulged to third parties outside the Council for their independent use unless the person to which the information relates, or their authorised representative, has authorised Council to do so or the disclosure is required or allowed by law. Council and its employees will not sell, trade or make available personal information to others.

4.2.2 Where Council out sources or contracts out functions that involve the collection, utilisation and/or holding of personal information, contractual measures shall be taken to ensure that contractors and subcontractors do not act in a way that would amount to a breach of this Policy.



PRIVACY POLICY GUIDELINES

4.2.3 Council will require that these contractors and subcontractors maintain the confidentiality of this information and abide by all applicable laws. Council will not permit any third parties to sell or use this information for their own purposes.

4.2.4 Contracts with third parties will include standard provisions about the purposes for which the contractor is to use the information and any other provisions necessary to ensure the contractor does not make unauthorised disclosures. Contracts may also contain provisions about how the contractor is to keep the information secure and what must happen with the information when the contracted out activity has been completed.

4.3 Data Quality

4.3.1 Council will take all reasonable steps to ensure that customers' personal information is accurate, complete and up-to-date. Council will respond to any requests from the public to correct inaccurate information in a timely manner. Such requests are to be forwarded to Council's Privacy Officer in the first instance.

4.4 Data Security

4.4.1 Council will take steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure.

4.4.2 Employees are responsible for protecting personal information from misuse, loss, corruption or disclosure. Personal information is to be handled with care and only used for authorised purposes.

4.4.3 All employees must maintain confidentiality and respect the privacy of individuals who have dealings with Council. Employees must treat all personal information as confidential and all *sensitive* information as *highly* confidential. Council employees will not disclose any confidential information, use any information to their personal advantage or permit unauthorised access to information.

4.4.4 Requests for information from the police, government agencies, either State or Federal, or anyone outside the Council are to be directed to the Privacy Officer.

4.4.5 All Council files are strictly confidential and under no circumstances should a member of the public have access to files. Employees must also be conscious of security within the office environment when members of the public are present. Members of the public must not be left unattended with Council files.

DOC NO: GOV.006.1	VERSION NO: 1	APPROVAL DATE: 15 October 2018
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PRIVACY POLICY GUIDELINES

- 4.4.6 Disciplinary measures may be taken in the event that employees act in contravention of this Guideline and fail to adhere to the principles of confidentiality and privacy.
- 4.4.7 Council maintains appropriate security standards and procedures to help prevent access to confidential information by anyone not authorised to access such information. Employees are obliged to assist in maintaining security standards and procedures.
- 4.4.8 Examples of the types of security measures that Council has implemented and will continue to support include:
- (a) Physical security: Council has adopted measures to prevent unauthorised entry to premises, systems to detect unauthorised access and secure containers for storing paper-based personal information;
 - (b) Computer and network security: Council has adopted measures to protect computer systems and networks for storing, processing and transmitting personal information from unauthorised access, modification and disclosure;
 - (c) Communications security: Council has adopted measures to prevent unauthorised intrusion into computer networks; and
 - (d) Personnel security: Council has adopted procedural and personnel measures for limiting access to personal information by authorised staff for approved purposes and controls to minimise security risks to the Council's information technology system.
- 4.4.9 Disposal of personal records held by Council, either by destruction or by transfer to State Archives Office will be carried out strictly in accordance with the *Archives Act 1983* and the *Disposal Schedule No 11 for Council Records* as issued by the Archives Office. Destruction of records containing personal information, including personal records is by secure means. Ordinarily, disposal or recycling of intact documents are not secure means of destruction and should only be used for documents that are already in the public domain. Reasonable steps to destroy paper documents that contain personal information include shredding, pulping or the disintegration of paper. All computers that are removed from use and made available for non-Council purposes will have all data removed from the hardware.

**PRIVACY POLICY GUIDELINES****4.5 Openness**

- 4.5.1 Council will have a Privacy Statement, which is a summary of this Policy, readily available and accessible to the public. Copies of the Privacy Statement will be available at the Council's Customer Service centres. Copies of this Guideline will also be made available upon request.

4.6 Access and Correction

- 4.6.1 Individuals are entitled to access personal information about them which is held by Council. Individuals are entitled to know generally what sort of personal information Council holds about them, for what purposes, and how it collects, holds, uses and discloses that information.
- 4.6.2 Requests for access to such information are to be made in writing and forwarded to Council's Privacy Officer for action. The Privacy Officer (Currently Corporate Secretary) must establish the identity of the individual asking for the information.
- 4.6.3 If an individual has made a written request for access, the Privacy Officer will acknowledge the request in accordance with standard Council procedures and, as a rule, grant access within 14 days from the date of receipt of the request.
- 4.6.4 Council will respond to public requests to correct information in a timely manner and in accordance with normal Council records procedures.
- 4.6.5 Council will provide written reasons when a request for access to, or correction of, personal information is refused.

4.7 Anonymity

- 4.7.1 Whenever it is lawful and practicable to do so, customers will be given the option of not identifying themselves when dealing with Council.

4.8 Training

- 4.8.1 All relevant Council employees will be made aware of their responsibilities in relation to the treatment of personal information in the workplace.

5.0 Legislation

- *Local Government Act 1993 (Tasmania)*
- *Archives Act 1983 (Tasmania)*
- *Privacy Act 1988 (Commonwealth)*

DOC NO: GOV.006.1	VERSION NO: 1	APPROVAL DATE: 15 October 20180
CONTROLLER: General Manager	APPROVED BY: - COUNCIL	REVIEW DATE: October 2022


"P"

Letter from General Manager

Sally Blanc <sblanc@warwyn.tas.gov.au>

Mon 8/07/2019 10:03 AM

To: Ryan Gilmour <ryan_gilmour@hotmail.com>

 1 attachments (46 KB)

2019 07 08 R Gilmour TasWater.pdf;

Good morning Mr Gilmour,

Please find attached letter from the General Manager.

Kind regards,

Sally Blanc

Executive Officer

General Managers Office

Waratah Wynyard Council

21 Saunders Street (PO Box 168)

Wynyard Tasmania 7325

Phone: (03) 6443 8311

<mailto:sblanc@warwyn.tas.gov.au>



WARATAH WYNYARD
COUNCIL



Please consider the environment before printing this e-mail

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Enquiries: Sally Blanc
Phone: (03) 6443 8311
Our Ref:

5 July 2019

Mr Ryan Gilmour

EMAIL: ryan_gilmour@hotmail.com

Dear Mr Gilmour,

RE: TASWATER DISPUTE – 30B OLD BASS HIGHWAY WYNYARD

In relation to your letter of 16 June 2019 we advise the following:

Waratah-Wynyard Council has been unable to locate any record of the owners of the Property, Mr & Mrs Gilmour, being either approached or agreeing formally or otherwise that they are prepared to accept ownership and future responsibility for the 100mm water main within the Property in accordance with the recommendation and subsequent resolution passed by the Waratah-Wynyard Council at its Meeting of Council held on 17 November 2003 and referred to in the minutes therein.

Please contact us on (03) 6443 8311 should you have any questions.

Yours sincerely,



Shane Crawford
GENERAL MANAGER


(Q)

Unlawful Release of Mr Deverell's Report to Taswater

Ryan Gilmour <ryan_gilmour@hotmail.com>

Tue 6/08/2019 5:17 PM

To: Shane Crawford <scrawford@warwyn.tas.gov.au>

 1 attachments (847 KB)

Letter to Shane Crawford re disclosure of Mr Deverell's Report 6.8.19.pdf;

Dear Sir,

Please find attached correspondence.

Regards,

Ryan Gilmour



Virus-free. www.avast.com

6 August, 2019

The General Manager
Waratah Wynyard Council

Attention: Shane Crawford

By email only: scrawford@warwyn.tas.gov.au

Dear Sir,

Release of Mr Deverell's Report to Taswater

I refer to your email of 13 June, 2019 attaching the Report from Mr Deverell at *Benchmark Building Surveyors Pty Ltd*.

I have in the last week received correspondence from Taswater in which they refer to Mr Deverell's Report and seek to rely upon certain information contained within it. Furthermore, Mr Jeremy Morse who holds the position of Department Manager of Legal Services at Taswater has advised that he received a copy of this report from your office!

As you are well aware, the Agreement reached with my parents at 30b Old Bass Highway, Wynyard on the morning of 8 February, 2019 was between the Waratah-Wynyard Council and Mr & Mrs Gilmour. Your desire to remain at arm's length from Taswater and thus reluctance to write on my instruction to Taswater directly regarding failing to obtain consent from Mr & Mrs Gilmour to place the 100mm meter on their property back in 2003/2004 was outlined by you verbally during our meeting at your office on 2 July, 2019. It is therefore stunning to hear that your office, without the consent of Mr & Mrs Gilmour, have released the report from Mr Deverell to Taswater as if to undermine the position of your rate payers.

Breaches of privacy and breaches of contract are incredibly serious matters and as you are aware, tens of thousands of dollars are at stake in respect to the dispute between Mr & Mrs Gilmour and Taswater. As General Manager, it is only fair I give you the opportunity to explain in writing the full circumstances surrounding the release of this report to Taswater so I can fully consider the direction this matter ought to take.

As a result of the above, time is now of the essence and thus I require a response within seven (7) days.

Regards,



Ryan Gilmour

"R"



FIRE SERVICE REPORT

BEACH RETREAT TOURIST PARK

30b OLD BASS HIGHWAY, WYNYARD

Prepared by

Barry Magnus – Building Surveyor
CC4804P

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BRADDON BUILDING SURVEYING _____ 8



Overview of Report

Scope

We have been requested by Mr. Ryan Gilmour to inspect and provide a report on the National Construction Code 2019 (NCC) regarding the requirement of 100mm Fire Main, Fire Hydrants and Hose Reels for the Beach Retreat Tourist Park (the Park) located at 30b Old Eass Highway, Wynyard.

It is our understanding that the property was once under Council ownership, the road within the tourist park at that time, I believe, was consider as a public road, however, has been transferred to private ownership and the road is now considered a private road within the tourist park.

Methodology

To establish the requirements, refence will be made to the complete Suite of the NCC, which consists of NCC Volume One, NCC Volume 2, NCC Volume 3 and NCC Guide to Volume One, which is available on the Australian Building Codes Board (ABCB), <https://ncc.abcb.gov.au/ncc-online> . This will be carried out, along with a site inspection of the property to note the location of the service infrastructure on site and the classification and separation of buildings contained on the site. Reference will also be made to the TasWater overlay on Hydrants contained on the List, available from www.thelist.tas.gov.au a copy of the overlay is attached to the report.

Information sited;

- Waratah Wynyard Council - Ordinary Meeting of Council, Minutes 17th November 2003;
- Letter to Mr. Ryan Gilmour 5 July 2019, from Waratah Wynyard Council;
- TasWater hydrant overlay from the list:



Inspection

The inspection was carried out on the 9th August 2019, on site Barry Magnus (Braddon Building Surveying), Ryan Gilmour, Mr. and Mrs. Gilmour (owners of the property).

Initially a brief inspection was carried out outside the tourist park (by Barry Magnus) to confirm the location of Fire Plugs shown on the TasWater Overlay (refer photo 3.0) all where located, along with a further fire plug located just outside the entry to the tourist park (refer photo 1.0), it appears that this hydrant is subject to maintenance and testing we assume by TasWater, however is not shown on the TasWater overlay.

The buildings located on site would be Classified as Class 1a, 1b and 10a buildings, all buildings on site have the required separation for fire as required by the "NCC Volume 2 – Part 3.7.2 Fire separation of external walls" (refer photo 7.0).

The 100mm service enters the site near the amenities block (refer photo 9.0).



Summary

Current requirements of the NCC; with regards to fire service (main) supplying, fire hydrants and fire hose reels are referenced in Volume One which relates mainly to Class 2 to Class 9 buildings, with floor areas greater than 500 m².

Buildings on site are Class 1a, 1b and 10a, therefore the NCC does not require the installation of hydrants and fire hose reels. Other factors may lead to consideration of the installation, such as Provision for special hazards NCC, Volume 1 – E1.10;

Extract:

“E1.10 Provision for special hazards

Suitable additional provision must be made if special problems of fighting fire could arise because of—

- (a) the nature or quantity of materials stored, displayed or used in a building or on the allotment; or
- (b) the location of the building in relation to a water supply for fire-fighting purposes.”

However, no materials that could be considered for this are located on site and existing water supplies outside the tourist park, provided by Taswater, provides adequate coverage of the buildings on site.

The 100mm main, fire plugs and fire hose reels, therefore, are not required under the NCC for the existing use and buildings contained on the site.



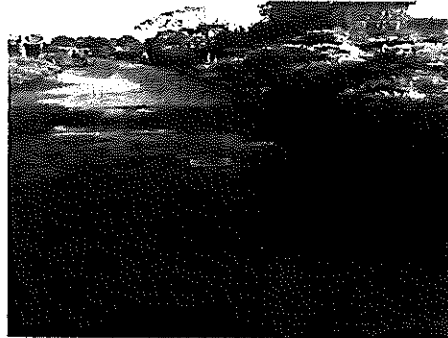
Appendix – PHOTOS:

NUMBER

PHOTO

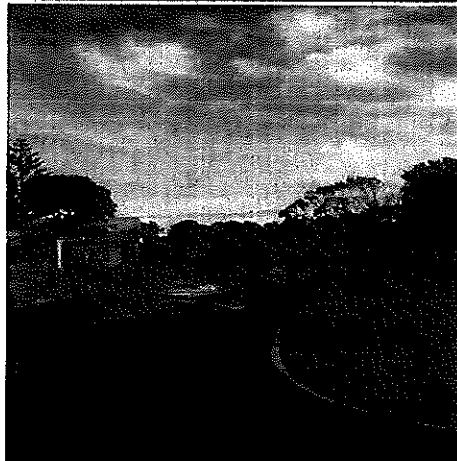
NOTES

1.0



Tourist park entry, with fire plug outside property entry.

2.0



Tourist Park Entry

3.0



Position of street hydrants – Old Bass Highway



NUMBER

PHOTO

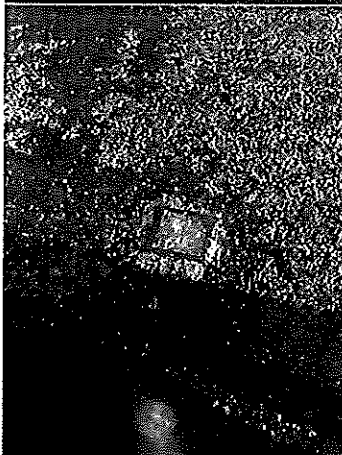
NOTES

4.0



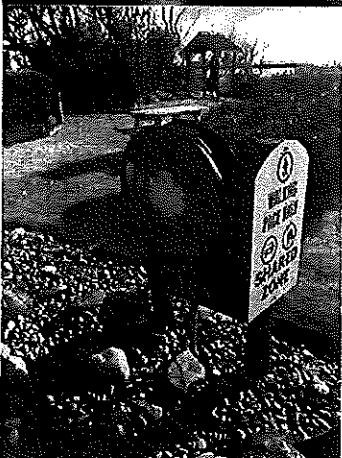
Non-maintained fire hose reel

5.0



Non-maintained park fire plug

6.0



Non-maintained fire hose reel

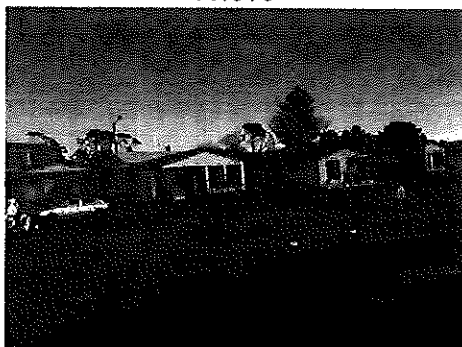


NUMBER

PHOTO

NOTES

7.0



Cabins – complying fire separation

8.0



Water meter

9.0



Main connection carried out by Council



TasWater Hydrant Plan



Taswater.pdf



Contact Information

Barry R. Magnus

16/03/2019

BARRY MAGNUS
BUILDING SURVEYOR -
CC4804P

Tel 03) 6424 1299

Mobile 0447 575728

barry@bradbuild.com.au



BRADDON BUILDING SURVEYING

57 Formby Road, Devonport

PO Box 224 Devonport TAS 7250

Tel 03 6424 1299

Fax 03 6424 1533

www.bradbuild.com.au

Questions asked of Mr Deverell's Report

Ryan Gilmour <ryan_gilmour@hotmail.com>

Fri 16/08/2019 12:48 PM

To: Barry Magnus <barry@bradbuild.com.au>

📎 4 attachments (2 MB)

Letter to Barry Magnus - Questions on Mr Deverell's Report 15.8.19.doc; Letter to Barry Magnus - Questions on Mr Deverell's Report 15.8.19.pdf; Benchmark Report 12.6.19.pdf; email from Tas Fire.pdf;

Hi Barry,

I attach the following:

1. Letter with questions re Mr Deverell's Report in .doc format;
2. Letter with questions re Mr Deverell's Report in .pdf format;
3. Copy of Mr Deverell's Report;
4. Copy of email from Mr Robert Whiteway of TasFire.

I have included my list of questions in both .pdf and .doc so that you use the Word version to simply copy and paste the questions into your own document and then provide your commentary under each question. Please feel free to answer with as much or as little information as you deem relevant.

Once again, thank you for your assistance.

Regards,
Ryan Gilmour

16 August, 2019

Barry Magnus
Bradclons Building Surveying

By email only: barry@bradbuild.com.au

Dear Sir,

Report for 30b Old Bass Highway, Wynyard

Thank you for coming to visit Beach Retreat Tourist Park at 30b Old Bass Highway, Wynyard in Tasmania ("the Property") and meet with my parents and I on 9 August, 2019.

As discussed with you, earlier this year an agreement was reached between the Waratah-Wynyard Council ("the Council") and my parents, Graeme & Cheryl Gilmour that the Council would engage an independent building surveyor to carry out an investigation and prepare a report on whether the 100mm main on the Property is required to serve the Property. I attach for your consideration the following:

- (a) A copy of a report created by Mr Stefan Deverell of Benchmark Building Surveyors Pty Ltd dated 12 June, 2019; and
- (b) Email of 13 March, 2019 from Mr Robert Whiteway of TasFire as referred to in Mr Deverell's report.

As you are aware, we have sought your expertise to investigate and report on this same question and thereby provide a second opinion on this matter.

Further to your report, I ask that you provide your comment to the following questions:

1. The second paragraph of Mr Deverell's report states: "the sole purpose of this report is to outline whether the 100mm main is necessary for the operation of the Tourist Park". Can this question be answered without resort to considering the National Construction Code ("NCC") and its impact on the Property? If so, how? If not, why not?
2. The third paragraph of Mr Deverell's report references his experience with caravan parks in the area noting that "...it is extremely common for FHR (Fire Hose Reels) and hydrant to be required in tourist Parks by respective Council's (sic) in order to issue Planning Permits". When it comes to determining the requirement for FHRs and hydrants for the Property, does information about what other similar type businesses have for fire protection impact in any way on your assessment as to the requirement for a 100mm main on the Property? If so, how? If not, why not?
3. The fifth paragraph (top of page 2) of Mr Deverell's report appears to suggest that the Council and TasFire are able to decide whether fire hose reels and fire hydrants must be installed on the Property without resort to considerations of the NCC or legislation? Do you agree or disagree and why?
4. The sixth paragraph of Mr Deverell's report states that when it comes to the Property, the "FHR (Fire Hose Reels) should not be disused and should be tested and maintained in accordance with AS1851-2012 Routine Service of Fire Protection Systems". Do you agree or disagree with this statement and why?

5. The seventh paragraph of Mr Deverell's report refers to the email of 13 March, 2019 from Robert Whiteway of TasFire advising that TasFire would not support the removal of FHR (Fire Hose Reels) and hydrants. Does this opinion on behalf of TasFire in any way affect your determination as to whether the 100mm main is required to exist on the Property and why?
6. Mr Deverell concludes in the final paragraph of his report that he will not go against the advice of TasFire and thus the FHRs (Fire Hose Reels) and hydrants must remain on the Property. Does this conclusion in your professional opinion adequately answer the question Mr Deverell set out to answer in his opening paragraph, namely whether the 100mm main currently installed on the Property is required to serve the Tourist Park? If so, how? If not, why not?
7. Please provide any other comments you deem relevant.

I look forward to hearing from you.

Regards,

A handwritten signature in black ink, appearing to read 'Ryan Gilmour', with a long horizontal stroke extending to the right.

Ryan Gilmour

T

Letter to Barry Magnus - Questions on Mr Deverell's Report 15.8.19 (002)

Barry Magnus <barry@bradbuild.com.au>

Mon 19/08/2019 11:37 AM

To: ryan_gilmour@hotmail.com <ryan_gilmour@hotmail.com>

📎 1 attachments (157 KB)

Letter to Barry Magnus - Questions on Mr Deverell's Report 15.8.19 (002).pdf;

Please find attached comments in blue.

Barry Magnus
Building Surveyor
Licence N^o CC4804P



Braddon Building Surveying
57 Formby Road
(PO Box 224)
Devonport TAS
Telephone: (03) 6424 1299
Facsimile: (03) 6424 1533
Mobile: 0447 575 728
Email: barry@bradbuild.com.au

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<http://www.mailguard.com.au>

16 August, 2019

Barry Magnus
Bradclons Building Surveying

By email only: barry@bradbuild.com.au

Dear Sir,

Report for 30b Old Bass Highway, Wynyard

Thank you for coming to visit Beach Retreat Tourist Park at 30b Old Bass Highway, Wynyard in Tasmania ("the Property") and meet with my parents and I on 9 August, 2019.

As discussed with you, earlier this year an agreement was reached between the Waratah-Wynyard Council ("the Council") and my parents, Graeme & Cheryl Gilmour that the Council would engage an independent building surveyor to carry out an investigation and prepare a report on whether the 100mm main on the Property is required to serve the Property. I attach for your consideration the following:

- (a) A copy of a report created by Mr Stefan Deverell of Benchmark Building Surveyors Pty Ltd dated 12 June, 2019; and
- (b) Email of 13 March, 2019 from Mr Robert Whiteway of TasFire as referred to in Mr Deverell's report.

As you are aware, we have sought your expertise to investigate and report on this same question and thereby provide a second opinion on this matter.

Further to your report, I ask that you provide your comment to the following questions:

1. The second paragraph of Mr Deverell's report states: "the sole purpose of this report is to outline whether the 100mm main is necessary for the operation of the Tourist Park". Can this question be answered without resort to considering the National Construction Code ("NCC") and its impact on the Property? If so, how? If not, why not?
 - I. It is unlikely that you could establish what is the minimum requirements for the operation of any facility, without establishing;
 - a. Classifications of buildings,
 - b. Floor areas and volumes of the buildings,
 - c. Fire separation of buildings and clearances to defined fire source features,
 - d. Availability of services.

All of this is required to be established, in the first instance by reference to the NCC, as required by the *Building Act 2016*.

2. The third paragraph of Mr Deverell's report references his experience with caravan parks in the area noting that "...it is extremely common for FHR (Fire Hose Reels) and hydrant to be required in tourist Parks by respective Council's (sic) in order to issue Planning Permits". When it comes to determining the requirement for FHRs and hydrants for the Property, does

information about what other similar type businesses have for fire protection impact in any way on your assessment as to the requirement for a 100mm main on the Property? If so, how? If not, why not?

- I. Each assessment must be carried out independently, as the requirements for the project / site must be relevant for that site.
 - II. In the Building Surveyors assessment, it is required that they issue the required documentation if the work is - likely to comply with *Building Act 2016*, not by referencing other sites.
3. The fifth paragraph (top of page 2) of Mr Deverell's report appears to suggest that the Council and TasFire are able to decide whether fire hose reels and fire hydrants must be installed on the Property without resort to considerations of the NCC or legislation? Do you agree or disagree and why?
 - I. All parties are required to Act in accordance with *Building Act 2016*, and therefore the NCC.
 - II. Tasfire is a Reporting Authority and provides a report to the building surveyor they are not the decision maker under *Building Act 2016*.
4. The sixth paragraph of Mr Deverell's report states that when it comes to the Property, the "FHR (Fire Hose Reels) should not be disused and should be tested and maintained in accordance with AS1851-2012 Routine Service of Fire Protection Systems". Do you agree or disagree with this statement and why?
 - I. It is required that all essential services are maintained on site, however I considered in this case the owner has the right to decommission services that are not required once obtaining professional advice whether they are required and referral to a reporting authority (the Chief Officer – TasFire).
5. The seventh paragraph of Mr Deverell's report refers to the email of 13 March, 2019 from Robert Whiteway of TasFire advising that TasFire would not support the removal of FHR (Fire Hose Reels) and hydrants. Does this opinion on behalf of TasFire in any way affect your determination as to whether the 100mm main is required to exist on the Property and why?
 - I. As previously stated above referral is required to a reporting authority under *Building Act 2016*, however in the case TasFire not supporting the removal they would need to justify why a non-required system was necessary. In this case they have not provided a reason for the non-required system to be in place and therefore I would inform them that I would not accept their advice under Section 132 (3) of *Building Act 2016*.
6. Mr Deverell concludes in the final paragraph of his report that he will not go against the advice of TasFire and thus the FHRs (Fire Hose Reels) and hydrants must remain on the Property. Does this conclusion in your professional opinion adequately answer the question Mr Deverell set out to answer in his opening paragraph, namely whether the 100mm main currently installed on the Property is required to serve the Tourist Park? If so, how? If not, why not?

- I. It appears that a direct answer to the question has been avoided, as the NCC does not have a trigger for this requirement for this system (example - size of buildings not exceeding 500m², no major hazardous material on site). While referral needs to be made to a reporting authority, the decision remains that of the Building Surveyor under *Building Act 2016* and in this case no justification is provided for the system to be on site.

7. Please provide any other comments you deem relevant.

- I. From my understanding of the documents reviewed, I have not found any reasonable justification for the non-required system to be site.

I look forward to hearing from you.

Regards,



Ryan Gilmour

I trust this brief response is of assistance.

Regards

Barry Magnus -
Braddon Building Surveying


9

30b Old Bass Highway

Ryan Gilmour <ryan_gilmour@hotmail.com>

Wed 21/08/2019 4:48 PM

To: Stefan Deverell <stefan@benchmarkbuildingsurveyors.com.au>

 6 attachments (3 MB)

Letter to Stefan Deverell 21.8.19.pdf; email from corey gould on 12.7.19.pdf; Braddons Building Surveying Services Report 16.8.19.pdf; Letter from Barry Magnus responding to questions put to him 19.8.19.pdf; Invoice 16.8.19 for Braddons Report.pdf; Proof of Payment of Braddons Building Surveying Services Account 21.8.19.pdf;

Dear Mr Deverell,

Please find attached the following:

1. Letter to you with questions to be answered and documents sought;
2. Copy of email from Mr Corey Gould on 12.7.19;
3. Report from Mr Barry Magnus of Braddon Building Surveying Services;
4. Letter of questions from me to Mr Magnus with his responses returned by email in blue;
5. Invoice from Braddons Building Surveying Services; and
6. Proof of payment of Braddons' Invoice.

Regards,
Ryan Gilmour

21 August, 2019

Stefan Deverell
Benchmark Building Surveyors Pty Ltd

By email only: stefan@benchmarkbuildingsurveyors.com.au

Dear Sir,

Taswater Dispute – 30b Old Bass Highway, Wynyard

I refer to your Report dated 12 June, 2019, my letter to you dated 16 June, 2019 and my telephone attendance upon you on 27 June, 2019.

You will recall that I was disappointed in the lack of detail in your Report, the complete lack of consideration of the law surrounding fire mains and fire fighting requirements such as the *General Fire Regulations 2010* and the *National Construction Code* ("the NCC"), your apparent failure to inspect 30b Old Bass Highway, Wynyard ("the Property") before writing your Report, your focus on inconsequential matters and your apparent reliance on historical assumptions rather than facts.

In my abovementioned correspondence I set out for you the types of matters you must consider and respectfully requested you to review and redraft your Report in order for it to answer the question "...whether the 100mm main currently installed at 30b Old Bass Highway, Wynyard is required to serve the Tourist Park" as per your engagement. I did not receive a response from you as to this correspondence and as such, I called you on 27 June, 2019 to seek to obtain an indication as to what you intended to do to rectify your Report. You indicated that you had merely 'skimmed' my letter and said that you were not redrafting your Report as the Council had not asked you to.

You may or may not be aware but I wrote a similar letter to Council informing them of the need to approach you to have you review and amend your Report. This ultimately culminated in Mr Corey Gould contacting you on or about 12 July, 2019 whereupon it appears you advised Mr Gould that you were satisfied with your Report and declined to review and redraft it as I had requested. I base this knowledge on an email I received from Mr Gould on 12 July, 2019 confirming exactly this point. I **attach** a copy of said email from Mr Gould from 12 July, 2019 for your information.

It is now important to take a step back and remind you how you obtained this job to begin with. My parents, Graeme & Cheryl Gilmour and I met with Mr Paul West and Mr Shane Crawford at the Property on 8 February, 2019. An Agreement was reached between Graeme Gilmour ("Graeme"), Cheryl Gilmour ("Cheryl") and Mr Crawford (on behalf of the Waratah-Wynyard Council) that as a result of the troubles Graeme and Cheryl were experiencing with TasWater and due to the 100mm main being placed on the Property back in or around 2004 by Council without their consent and against the recommendation and subsequent resolution passed by Council on 17 November, 2003 they would have you provide a report on the need for the 100mm main to exist and that Council would cover your account for same. This information is important as you were engaged in your capacity as a building surveyor to perform your functions as a building surveyor in relation to the 100mm main that exists on the Property. You therefore were not working directly for the Council but in fact, Graeme and Cheryl as owners of the Property and therefore the Council could only ever have been regarded by you as acting as Graeme and Cheryl's agent (see s28 of the *Building Act 2016*).

As a result of the deficiencies in your Report and your refusal to review and redraft same, I had no choice other than to engage an alternative building surveyor at Graeme & Cheryl's expense. I attach for your consideration the following:

- (a) Report from Mr Barry Magnus of Braddon Building Surveying dated 16 August, 2019;
- (b) Letter of questions from me to Mr Magnus with his responses in blue;
- (c) Invoice from Mr Magnus for his services; and
- (d) Receipt as proof of payment by Graeme & Cheryl of Mr Magnus' Invoice.

The above attached documents from *Braddon Building Surveying Services* speak for themselves. Not only do they confirm my thoughts as I previously put to you in writing, but they also evidence that the investigation and analysis was of such a poor standard that it can be by no means argued you met the standard of a reasonably competent licenced surveyor in respect to the work you carried out in this matter.

As a licensed surveyor, you operate subject to the *Occupational Licensing Act 2005* ("the Act") and thus you are required to comply with any relevant code of practice relating to the building surveying industry (see s25 of the Act).

In accordance with s53 of the Act, the most recent published code is the *Occupational Licensing (Building Surveyors) Code of Practice 2018* ("the Code"). Item 2 on Page 3 of the Code outlines a number of mandatory requirements for you which include: Maintaining satisfactory levels of competence and taking all steps to obtain all relevant facts when performing building surveying functions.

The Code continues at Item 5 (page 5) by mandating that in performing your functions you are to apply all relevant building laws, regulations, relevant standards and guidelines and not enter into conduct that could bring or tend to bring the profession of building surveyors into disrepute and so it continues.

The point to be taken from the above, is that I am now satisfied you have prima facie breached your requirements under the Act and the Code in several key ways which has in turn caused a financial loss to Graeme & Cheryl.

With the above said, before I consider the next step in this matter, having reviewed the advice of the *Department of Consumer, Building and Occupational Services* (CBOS) I want to provide you with an opportunity for comment and to rectify as best you can the issues you have created by your actions in creating your Report.

I seek the following from you within **fourteen (14) days**:

1. A copy of all letters, emails, facsimiles and any other forms of correspondence you received from our agent, the Waratah-Wynyard Council (including its employees and assigns) along with copies of any written response you provided to same.
2. I seek your response in relation to the following aspects of your Report:
 - (a) Why did you not undertake a physical inspection of the Property before drafting your Report?

- (b) Why did you choose not to consider the NCC and in doing so give no thought to the classification of buildings, floor areas and volumes of buildings, fire separation of buildings and clearances to defined fire source features and availability of services?
 - (c) Why did you refer to anecdotal historical information and other similar businesses to support your conclusion in your report rather than applying the Code and the NCC to determine likely compliance with the Act?
 - (d) Why did you choose to regard TasFire as a 'decision maker' rather than their actual status as merely a 'Reporting Authority'?
3. Your report references a number of matters which are inaccurate and it is important I understand where you have obtained such information from, namely:
- (a) You state in your third paragraph that: *"The installation of the fire hose reels and use of the fire hydrant plugs located on site was a requirement of the Planning Permit for the caravan park prior to the property being owned by the Gilmour's (sic)..."* Noting that you have stated this as an apparent fact, please provide your evidence and the source of this information.
 - (b) Paragraph five (top of page 2) you state: *"A 32mm main may be enough to service domestic supplies to a building however for those collection of buildings to be installed as a Tourist Park, Council and TFS determined that the fire hose reels and hydrants were necessary"*. Please provide your evidence and source of this information.
4. Finally, given your report has put Graeme & Cheryl to the expense of having to engage an appropriately qualified and experienced building surveyor to provide a second opinion that complies with both the Act and the Code as a direct result of your actions, I hereby provide you with **fourteen (14) days** to liaise with our agent, the Waratah-Wynyard Council to ensure that Graeme & Cheryl receive a full reimbursement for their out of pocket expenses in this matter within that same time frame. A cheque can be made payable to Graeme & Cheryl Gilmour for the sum of \$1,050.00.

I look forward to receiving the above within **fourteen (14) days**.

Regards,



Ryan Gilmour

8/21/2019

Mail - Ryan Gilmour - Outlook

RE: Stefan Deverell Report

Corey Gould <cgould@warwyn.tas.gov.au>

Mon, 19/08/2019 14:51 PM

To: Ryan Gilmour <ryan_gilmour@hotmail.com>

Cc: Shane Crawford <scrawford@warwyn.tas.gov.au>

Hi Ryan,

I have contacted Mr Deverell to discuss the matter, at this stage both Council and Mr Deverell are satisfied with the findings of the original report and will not be seeking to pursue the matter further.

Regards,

Corey Gould

Manager Engineering Services
Waratah-Wynyard and Circular Head Councils
Phone: 031 6443 8360
Email: cgould@warwyn.tas.gov.au



Waratah-Wynyard Council TAS 7540
Tel: 03 6443 8360
PO Box 546, Smithton TAS 7540
24 Smithton Smithton

Phone: 03 6443 8360
E: cgould@warwyn.tas.gov.au
W: www.waratah-wynyard.tas.gov.au



Circular Head Council TAS 7540
Tel: 03 6443 8360
ABN: 65 660 661 515
PO Box 546, Smithton TAS 7540
W: www.waratah-wynyard.tas.gov.au

Waratah-Wynyard Council is the 2014 Australian Tidy Towns Award

Waratah-Wynyard Council is the 2014 Australian Tidy Towns Award

Keep
Australia
Beautiful



www.circularhead.tas.gov.au/tidytown

From: Ryan Gilmour <ryan_gilmour@hotmail.com>

16 August, 2019

Barry Magnus
Braddons Building Surveying

By email only: barry@bradbuild.com.au

Dear Sir,

Report for 30b Old Bass Highway, Wynyard

Thank you for coming to visit Beach Retreat Tourist Park at 30b Old Bass Highway, Wynyard in Tasmania ("the Property") and meet with my parents and I on 9 August, 2019.

As discussed with you, earlier this year an agreement was reached between the Waratah-Wynyard Council ("the Council") and my parents, Graeme & Cheryl Gilmour that the Council would engage an independent building surveyor to carry out an investigation and prepare a report on whether the 100mm main on the Property is required to serve the Property. I attach for your consideration the following:

- (a) A copy of a report created by Mr Stefan Deverell of Benchmark Building Surveyors Pty Ltd dated 12 June, 2019; and
- (b) Email of 13 March, 2019 from Mr Robert Whiteway of TasFire as referred to in Mr Deverell's report.

As you are aware, we have sought your expertise to investigate and report on this same question and thereby provide a second opinion on this matter.

Further to your report, I ask that you provide your comment to the following questions:

1. The second paragraph of Mr Deverell's report states: "the sole purpose of this report is to outline whether the 100mm main is necessary for the operation of the Tourist Park". Can this question be answered without resort to considering the National Construction Code ("NCC") and its impact on the Property? If so, how? If not, why not?
 - I. It is unlikely that you could establish what is the minimum requirements for the operation of any facility, without establishing;
 - a. Classifications of buildings,
 - b. Floor areas and volumes of the buildings,
 - c. Fire separation of buildings and clearances to defined fire source features,
 - d. Availability of services.

All of this is required to be established, in the first instance by reference to the NCC, as required by the *Building Act 2016*.

2. The third paragraph of Mr Deverell's report references his experience with caravan parks in the area noting that "...it is extremely common for FHR (Fire Hose Reels) and hydrant to be required in tourist Parks by respective Council's (sic) in order to issue Planning Permits". When it comes to determining the requirement for FHRs and hydrants for the Property, does

information about what other similar type businesses have for fire protection impact in any way on your assessment as to the requirement for a 100mm main on the Property? If so, how? If not, why not?

- I. Each assessment must be carried out independently, as the requirements for the project / site must be relevant for that site.
 - II. In the Building Surveyors assessment, it is required that they issue the required documentation if the work is - likely to comply with *Building Act 2016*, not by referencing other sites.
3. The fifth paragraph (top of page 2) of Mr Deverell's report appears to suggest that the Council and TasFire are able to decide whether fire hose reels and fire hydrants must be installed on the Property without resort to considerations of the NCC or legislation? Do you agree or disagree and why?
 - I. All parties are required to Act in accordance with *Building Act 2016*, and therefore the NCC.
 - II. Tasfire is a Reporting Authority and provides a report to the building surveyor they are not the decision maker under *Building Act 2016*.
4. The sixth paragraph of Mr Deverell's report states that when it comes to the Property, the "FHR (Fire Hose Reels) should not be disused and should be tested and maintained in accordance with AS1851-2012 Routine Service of Fire Protection Systems". Do you agree or disagree with this statement and why?
 - I. It is required that all essential services are maintained on site, however I considered in this case the owner has the right to decommission services that are not required once obtaining professional advice whether they are required and referral to a reporting authority (the Chief Officer – TasFire).
5. The seventh paragraph of Mr Deverell's report refers to the email of 13 March, 2019 from Robert Whiteway of TasFire advising that TasFire would not support the removal of FHR (Fire Hose Reels) and hydrants. Does this opinion on behalf of TasFire in any way affect your determination as to whether the 100mm main is required to exist on the Property and why?
 - I. As previously stated above referral is required to a reporting authority under *Building Act 2016*, however in the case TasFire not supporting the removal they would need to justify why a non-required system was necessary. In this case they have not provided a reason for the non-required system to be in place and therefore I would inform them that I would not accept their advice under Section 132 (3) of *Building Act 2016*.
6. Mr Deverell concludes in the final paragraph of his report that he will not go against the advice of TasFire and thus the FHRs (Fire Hose Reels) and hydrants must remain on the Property. Does this conclusion in your professional opinion adequately answer the question Mr Deverell set out to answer in his opening paragraph, namely whether the 100mm main currently installed on the Property is required to serve the Tourist Park? If so, how? If not, why not?

- I. It appears that a direct answer to the question has been avoided, as the NCC does not have a trigger for this requirement for this system (example - size of buildings not exceeding 500m², no major hazardous material on site). While referral needs to be made to a reporting authority, the decision remains that of the Building Surveyor under *Building Act 2016* and in this case no justification is provided for the system to be on site.

7. Please provide any other comments you deem relevant.

- I. From my understanding of the documents reviewed, I have not found any reasonable justification for the non-required system to be site.

I look forward to hearing from you.

Regards,



Ryan Gilmour

I trust this brief response is of assistance.

Regards

Barry Magnus -
Bradclon Building Surveying

Braddon Building Surveying Pty Ltd

ABN: 62 120 516 298



PO Box 224 DEVONPORT TAS 7310
Phone: 03 6424 1299 Fax: 03 6424 1533
Email: admin@bradbuild.com.au

Tax Invoice

Beach Retreat Tourist Park
C/- Ryan Gilmour
30b Old Bass Highway
Wynyard TAS 7325
Australia

00013066

16/08/2019

Job No.: *None

Your Order #:

Attention:

Description	Amount	Code
CF77-19 Building Surveying services for the provision of a Fire Service Report for 30b Old Bass Highway, Wynyard	\$1,050.00	GST

EFT Details:

Braddon Building Surveying Pty Ltd
Bank: ANZ
BSB: 017-526
Account No.: 4898-40637

Please include invoice number as reference

GST: \$95.45
Total Inc GST: \$1,050.00
Amount Applied: \$0.00

Balance Due: \$1,050.00

Terms: 7 Days from Invoice Date

Wellpad Business One

Transactions

Withdrawals

Account Services

Details

Balance

Things you should know

From



To



Date

Description

Debit

Credit

Balance

21 Aug 2019

WITHDRAWAL-OSKO PAYMENT 1356121
Braddon building surveying 00013066

-\$1,050.00



Transfer
Funds



Make
Payments

" V "


Release of Mr Deverell's Report & First and Final Demand for Payment

Ryan Gilmour <ryan_gilmour@hotmail.com>

Wed 21/08/2019 6:19 PM

To: Shane Crawford <scrawford@warwyn.tas.gov.au>

Cc: Corey Gould <cgould@warwyn.tas.gov.au>

 9 attachments (4 MB)

Letter to Shane Crawford re Mr Magnus Report & Failure to Respond 21.8.19.pdf; email chain with C.Gould p1.pdf; email chain with C.Gould p2.pdf; email chain with C.Gould p3.pdf; Braddons Building Surveying Services Report 16.8.19.pdf; email from Barry Magnus attaching response to questions asked of him 19.8.19.pdf; Letter from Barry Magnus responding to questions put to him 19.8.19.pdf; Invoice 16.8.19 for Braddons Report.pdf; Proof of Payment of Braddons Building Surveying Services Account 21.8.19.pdf;

Dear Mr Crawford,

Please find attached the following:

1. Letter to you dated 21.8.19;
2. Chain of emails between myself and Mr Corey Gould (3 pages);
3. Report from Mr Barry Magnus dated 16.8.19
4. Email from Mr Barry Magnus of 19.8.19 attaching his response to my letter of questions relating to Mr Deverell's Report dated 16.8.19;
5. Invoice from Braddons Building Surveying Services; and
6. Proof of Payment of Braddons' Invoice.

I look forward to hearing from you.

Regards,
Ryan Gilmour

21 August, 2019

The General Manager
Waratah Wynyard Council

Attention: Shane Crawford

By email only: scrawford@warwyn.tas.gov.au

Dear Sir,

Release of Mr Deverell's Report & First and Final Demand for Payment

I refer to my letter of 6 August, 2019.

I note I have not received a response to the above correspondence despite its pressing nature and my request for a response within seven (7) days. Even more concerning is the fact that you are mandated by clause B.2(a) and D.1(a) of your *Customer Service Charter* to provide at the very least an acknowledgment of receiving my correspondence within five (5) working days which you have failed to adhere to. Are you intending to provide a response together with a proposed way forward to resolve this leak of privileged information, and if so, when can I expect to receive same?

I take this opportunity to cast your mind back to the concerns I raised with you with respect to Mr Deverell's Report dated 12 June, 2019. Mr Deverell's Report was so obviously deficient in its contents that I emailed you a five page letter dated 16 June, 2019 outlining some of those issues and respectfully requested that you reengage Mr Deverell or an alternative appropriately qualified surveyor to carry out the task that was requested at first instance. You chose not to address this point until I met with you at your Council Chambers on 2 July, 2019 at 9am. Your response was along the lines of that you did not understand why anything further was required from Mr Deverell and that as far as you were concerned the Council had fulfilled its duty upon the issuing of Mr Deverell's Report dated 12 June, 2019.

I followed up this meeting with an email to Mr Corey Gould of your office on 5 July, 2019 noting that you had tasked him with liaising with Mr Deverell in this matter. A copy of this email is **attached** for your records. Its contents are self evident.

I followed up the meeting with an email to you on 5 July, 2019 with amongst other things, advising you that I required an amended report from Mr Deverell before Council had satisfied its obligations. I never received a response from you in relation to this aspect of the correspondence.

I contacted you by telephone on 12 July, 2019 at 4.47pm whereby you advised that you did not know what was happening with regards to reengaging Mr Deverell but that you would find Mr Gould and have him call me back.

On 12 July, 2019 at 4.58pm I received an email from Mr Gould advising that both Council and Mr Deverell were "*satisfied with the findings of the original report and will not be seeking to pursue the matter further*". I responded by email to Mr Gould on 16 July, 2019 advising that I would engage an alternative building surveyor to actually consider the law in regards to this matter and send your office the account for reimbursement of same. Mr Gould responded by email on 18 July, 2019 reaffirming your position. A copy of this chain of emails is **attached** for your reference.

As promised, I engaged Mr Magnus of *Braddon Building Surveying Services* on behalf of Graeme and Cheryl who undertook a physical inspection of the Property and provided a report as well as comment on Mr Deverell's Report. I attach for your records and perusal, the following:

- (a) Report from Mr Barry Magnus of Braddon Building Surveying dated 16 August, 2019;
- (b) Email from Mr Magnus of 19 August, 2019 attaching his response to my Letter of questions dated 16 August, 2019.
- (c) Invoice from Mr Magnus for his services; and
- (d) Proof of payment by Graeme & Cheryl of Mr Magnus' Invoice.

The contents of Mr Magnus' Report and his comments to the questions I asked of him in relation to Mr Deverell's Report speak for themselves. The application of the buildings on the Property to the contents of the *National Construction Code* and compliance with the *Occupational Licensing (Building Surveyors) Code of Practice 2018* as required under s23 of the *Occupational Licensing Act 2005* is refreshing and is exactly the type of assessment that Mr Deverell ought to have carried out and was pointed out to you from the outset in the aforementioned correspondence. To be clear, Mr Magnus is not simply providing a second opinion where competing reports from experts can be debated. Mr Deverell simply did not do his job.

So that leaves the Council in an interesting position. You choose to remain of the stance that you are not liable for the expenses incurred by Graeme & Cheryl regarding the engagement of *Braddon Building Surveying Services* or you acknowledge your failure to comply with my request to have Mr Deverell do his job and review and redraft his Report and provide a cheque made out to Graeme & Cheryl for **\$1,050.00** as reimbursement for their out of pocket expenses. The legal basis behind seeking payment for the financial loss incurred by Graeme and Cheryl is sound. The need to engage *Braddon Building Surveying Services* and the costs associated with same occurred as a direct result of your failure to comply with the agreement reached at the Property on 8 February, 2019 (that is, failure to obtain a report that examines the requirement for the 100mm main on the Property to a standard of the reasonably competent licensed building surveyor) or otherwise failure to comply with duties as an agent of Graeme and Cheryl or discharge those duties with the requisite due care and skill.

Whilst I am yet to finalise who the parties to the claim will be, my thoughts at this point are that there would be four parties involved, namely the Council, yourself (in your personal capacity), Mr Gould (in his personal capacity) and Mr Deverell. You can defend matters how you see fit. If you would prefer to avoid litigation and choose to make full payment of **\$1,050.00** to Graeme and Cheryl, you have until **5pm Thursday 5 September, 2019** to make payment. After this time, I will attend to drafting, filing and serving a claim with the Magistrates Court of Tasmania without further reference to you.

I encourage you to obtain your own independent legal advice.

Regards,



Ryan Gilmour

W

RE: Release of Mr Deverell's Report & First and Final Demand for Payment

Shane Crawford <scrawford@warwyn.tas.gov.au>

Wed 28/08/2019 3:59 PM

To: Ryan Gilmour <ryan_gilmour@hotmail.com>

Hi Ryan

I note receipt of your recent correspondence regarding your dispute with Taswater and the associated follow up questions and actions you demand of Council.

As you are aware, as part of the Beach Retreat Tourist Park's dispute with TasWater, you were asked to provide advice from a building surveyor or the Tasmanian Fire Service regarding necessary connections at the Beach Retreat Tourist Park. Waratah-Wynyard Council agreed that at its expense, it would engage a Surveyor to undertake an investigation into the water requirements for the Property insofar as water pipelines and meters were concerned and provide the associated report. *Benchmark Building Surveyors Pty Ltd* were engaged by Council to undertake the work. At no stage did Council have any obligation to fund this report – it was provided as a gesture of goodwill to assist resolution of the dispute between the Beach Retreat Tourist Park and TasWater. As Council commissioned and paid for the report it is Council property and as such the report was provided to TasWater on the same day the report was provided to yourself again as information that both parties sought for dispute resolution.

Council agreed to engage a suitably qualified building surveyor and has honoured that obligation. The email from Corey Gould to yourself on 18 July states *"You are well within your rights to engage an alternate building surveyor to review these findings should you deem necessary, however this review will not be commissioned by Council, nor will Council accept any liability for expenses associated with this review"*. This position has not changed.

Throughout the investigation relating to this dispute, Council has provided both your family and TasWater with information relating to the matter. Council does not require, nor will it seek, your approval to release this information.

The recent approach you have taken with your interactions with Council and subsequent delivery of your messages has been disappointing to say the least, especially given Council's offer to help facilitate and advocate for a mutually agreeable outcome. Council considers its obligations to be met in regards to the dispute you represent, between the Beach Retreat Tourist Park and Taswater and as such will pay no further part in this resolution and wish you well in your endeavours to pursue the issue.

Regards

Shane Crawford

General Manager

Waratah Wynyard Council

21 Saunders Street (PO Box 168)

Wynyard TAS 7325

P: (03) 6443 8300 | www.warwyn.tas.gov.au



WARATAH WYNYARD
COUNCIL

From: Ryan Gilmour <ryan_gilmour@hotmail.com>

Sent: Wednesday, 21 August 2019 6:20 PM

To: Shane Crawford <scrawford@warwyn.tas.gov.au>

Cc: Corey Gould <cgould@warwyn.tas.gov.au>

Subject: Release of Mr Deverell's Report & First and Final Demand for Payment
Importance: High

Dear Mr Crawford,

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2. Chain of emails between myself and Mr Corey Gould (3 pages);
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4. Email from Mr Barry Magnus of 19.8.19 attaching his response to my letter of questions relating to Mr Deverell's Report dated 16.8.19;
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I look forward to hearing from you.

Regards,
Ryan Gilmour

RE: Release of Mr Deverell's Report & First and Final Demand for Payment

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Regards

Shane Crawford

General Manager

Waratah Wynyard Council

21 Saunders Street (PO Box 168)

Wynyard TAS 7325

P: (03) 6443 8300 | www.warwyn.tas.gov.au



From: Ryan Gilmour <ryan_gilmour@hotmail.com>

Sent: Wednesday, 21 August 2019 6:20 PM

To: Shane Crawford <scrawford@warwyn.tas.gov.au>

Cc: Corey Gould <cgould@warwyn.tas.gov.au>

Subject: Release of Mr Deverell's Report & First and Final Demand for Payment
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6. Proof of Payment of Braddons' Invoice.

I look forward to hearing from you.

Regards,
Ryan Gilmour

Wynyard Caravan Park

Mc Guinness, Andrew <Andrew.McGuinness@fire.tas.gov.au>

Mon 20/04/2020 9:38 AM

To: Ryan Gilmour <ryan_gilmour@hotmail.com>

📎 1 attachments (230 KB)

03125 20 TasWater_Wynyard_Caravan_Park_April_2020.pdf;

Hi Ryan,

I hope you and your family are well given the current circumstances in the north west. Please find attached a letter recently sent to TasWater regarding the suggested alternative proposal for the fire safety features for the Wynyard Caravan Park.

It is as per our conversation and self-explanatory. You need to understand that there isn't a lot more I can do from a fire safety systems perspective. I have offered to meet them onsite to talk through the alternative solution and so as everyone is on the same page.

We haven't completed our submission to the Economic Regulator at this point in time but once complete I will endeavour to send it through to you for your information.

Good luck with it all and if I can be of any further assistance please don't hesitate to contact me.

Kind regards, Andrew

Andrew McGuinness
Manager – Building Safety

Tasmania Fire Service

Service | Professionalism | Integrity | Consideration

Cnr Argyle and Melville Streets Hobart | GPO Box 1526 Hobart Tasmania 7001

Phone 6166 5544

andrew.mccuinness@fire.tas.gov.au | www.fire.tas.gov.au

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Tasmania Fire Service

Building Safety

File 3/C/0037 - 03125/2020
Officer: AM:LR

General Manager
TasWater
GPO Box 1393
HOBART TAS 7001

RE: WYNYARD CARAVAN PARK – FIRE SAFETY INFRASTRUCTURE

I write to you in relation to the above matter and further to correspondence that you received from the Chief Officer in November 2019. I have met onsite with the operators of the Wynyard Caravan Park to discuss their concerns with the fire safety infrastructure on the site. Tasmania Fire Service' position has not changed in that the removal of the fire safety and water infrastructure would result in considerable delays for firefighters in providing intervention to the site due to the excessive distances from surrounding hydrants.

The concerns of the Park operators are centred around the ongoing costs of the provision of the 100mm water main to the property. Whilst onsite an alternative option was discussed that may provide a suitable solution for all stakeholders. The site appears to originally be part of a ring main and that infrastructure although disconnected, may still be in place.

It may be possible to reinstate a fire plug to the water main off the Old Bass Highway at the base of the main entrance to the Caravan Park. Additionally, a fire plug could be installed at the boundary of the property of the Wynyard Caravan Park to the northeast of number 2 Old Bass Highway. If this fire plug was located very close to the boundary then this should provide a sufficient water supply provision for the purposes of firefighting.

The property owner of the Caravan Park has agreed to provide unrestricted access to the rear of the property to allow firefighters access to the fire plug should this be required. Attached to this correspondence is a diagram showing the locations of the fire plugs that will allow the existing infrastructure to be disconnected.

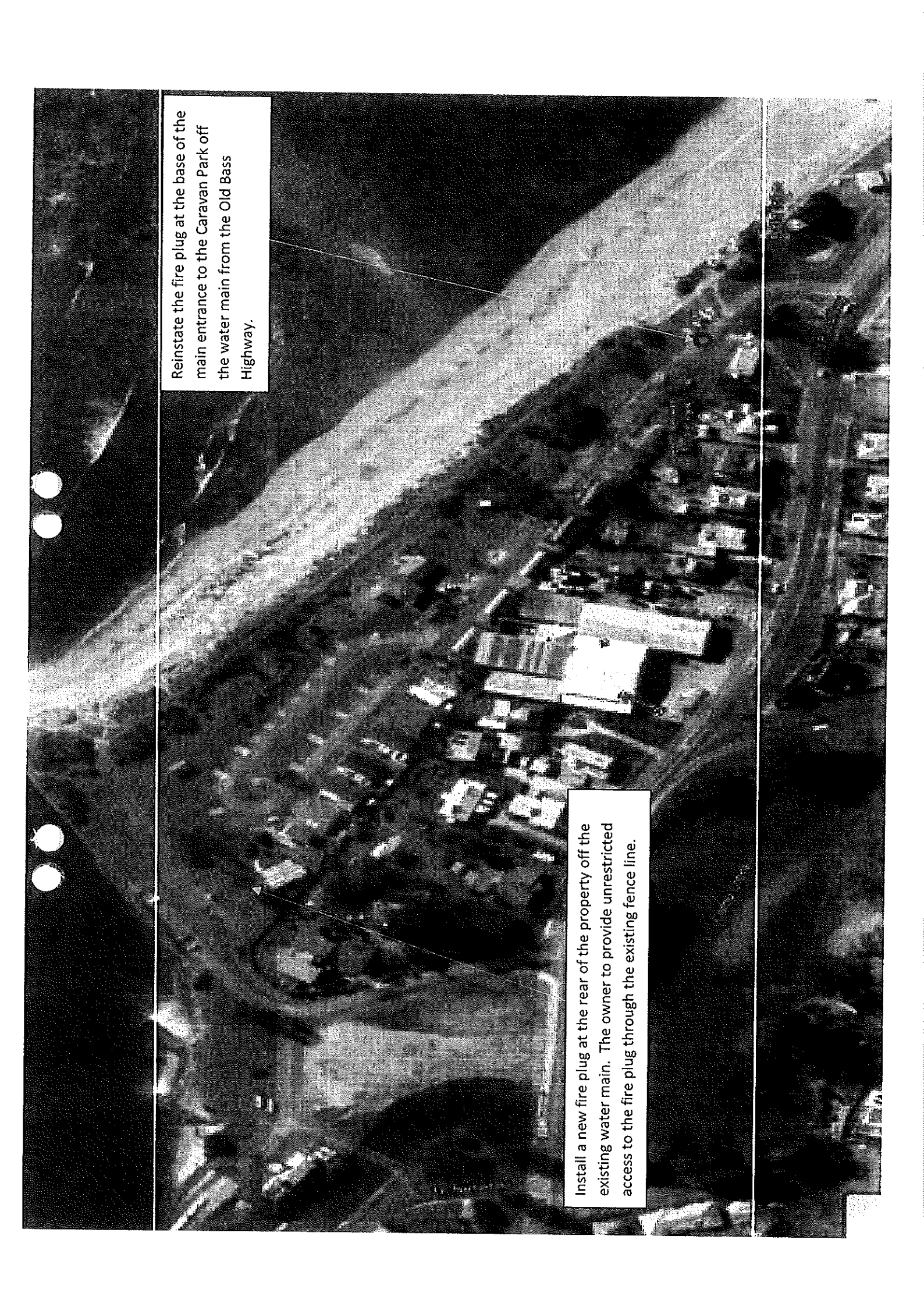
It should be noted that this option is less than ideal however, the costs of the provision of the 100mm main are cost prohibitive for the operators of the Park and this appears as the only alternative option that may suit all stakeholders. I would be able to meet a TasWater representative onsite to discuss if required. If you have any questions in relation to this issue please contact Manager, Building Safety Andrew McGuinness on 6166 5544.

Yours sincerely

Andrew McGuinness
MANAGER BUILDING SAFETY

6 April 2020



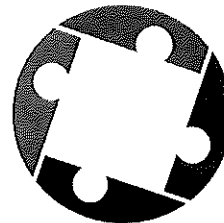
An aerial photograph showing a large, light-colored building complex in the center. To the left is a dark, wooded area. To the right is a residential neighborhood with smaller houses and streets. A road or driveway runs along the bottom of the property. Two white text boxes with black borders are overlaid on the image, each with a line pointing to a specific location. The top box points to a spot near the wooded area, and the bottom box points to a spot near the residential area.

Reinstate the fire plug at the base of the main entrance to the Caravan Park off the water main from the Old Bass Highway.

Install a new fire plug at the rear of the property off the existing water main. The owner to provide unrestricted access to the fire plug through the existing fence line.

Ombudsman Tasmania

Level 6, 86 Collins Street, Hobart
GPO Box 960, Hobart Tas 7001
Phone: 1800 001 170
Email: ombudsman@ombudsman.tas.gov.au
Web: www.ombudsman.tas.gov.au



In reply please quote: **O2001-127**
Contact Officer: Leah Dorgelo

20 August 2020

Mr Graeme Gilmour
Beach Retreat
30B Old Bass Highway
WYNYARD TAS 7325

Via email: gcgilmour51@gmail.com

Dear Mr Gilmour

Your complaint against TasWater

I refer to your Ombudsman complaint against TasWater, received on 29 January 2020. I have conducted preliminary inquiries under section 20A of the *Ombudsman Act 1978* into your concerns with TasWater and the Waratah-Wynyard Council (the Council). I have now finalised those inquiries and am in a position to provide a final assessment of your complaint. I apologise for the delay in writing to you, I have been on an extended period of unexpected leave.

In my previous letter of 12 May 2020, I indicated that I did not consider that further action was warranted in relation to your complaints about excessive TasWater Equivalent Tenement (ET) charges or failure to provide remissions relating to water leaks on private pipework. While you appear to have accepted this decision in regard to the water leaks, you did not in relation to the ET issue and provided comments in your letter of 27 May 2020 which I will address below.

I also indicated in my 12 May letter that the dispute between you and TasWater regarding the ownership of, and liability for, the 100mm water meter on your property appeared to be on the brink of court action and unlikely to reach a resolution through any other means. Due to this, I considered that action by our Office was not justifiable due to the alternative method of resolution and the entrenched opposing legal positions of the parties. However, following our further communication by phone and email in mid-May 2020, I agreed to make further inquiries with the Council to obtain additional information about the historical situation leading to the current dispute and related recent administrative action. I have now received a response from the Council, as well as some additional information from TasWater. My updated position on this part of your complaint is also set out below.

ET concerns

You stated that the ET calculation and assessment of TasWater was unfair and that a case-by-case individual assessment or reduction should have been applied due to water leaks on your property. While I accept that water leaks may have had some role in inflating your ET charges, these are known leaks on your private pipework and it is open to TasWater to consider that your decision not to fix these leaks does not warrant a changed ET assessment. I note also that TasWater has previously provided a significant remission of \$2,683.16 on your ET charges as a goodwill gesture in recognition of your water leaks. It also appears that, under the current TasWater Price and

Service Plan, your water leaks should not be impacting on your ET charges. It is clear that you believe that the ET rate being applied to your property in accordance with the current charging rates is too high and that this is particularly difficult due to the depressed economic climate in Wynyard. As I have previously indicated, the charging rates and the method of calculation (based on potential rather than actual load on the sewerage system) are set by the Tasmanian Economic Regulator and your concerns should be directed there to lobby for change to this policy. From an administrative perspective, it is best practice that a standard charging policy be implemented for all TasWater customers and that it is applied consistently. TasWater appears to be doing this appropriately and, accordingly, I am not satisfied that there is any administrative issue in relation to ETs which would warrant further investigation by our Office. I again suggest that you make a submission to the Tasmanian Economic Regulator about possible changes to the ET charging rates and methodology, if you wish to pursue this complaint.

100mm water meter dispute

I have reviewed the extensive material you provided in relation to the Council and have made my own inquiries, receiving a response from Mr Shane Crawford, General Manager of the Council. The Council strongly disagrees that it has acted improperly or obstructively, stating that it has responded to your requests for information over an extended period, provided information to TasWater to try to assist to resolve the dispute (including paying for a building surveyor report as a goodwill gesture). It indicated that there was no further information it could provide to TasWater or further action it was able to take to assist to resolve this dispute, as it considers that it had done all it could already and it is now a matter for you and TasWater to resolve. While I will make comments to the Council about the importance of giving clear parameters to try to prevent the mismatched expectations which occurred in relation to the commissioning and finalisation of the Benchmark Building Surveyors report, there does not appear to be any other administrative action which requires further action by our Office. The actions of principal concern are of a historical nature and it is not possible for our Office to review these 17 years later. It is open to the Council to decline to assist further in this dispute, as it is no longer the water authority and appears to have provided TasWater with as much information about the Council's involvement with the 100mm connection as it currently possesses. I do not consider that it would be justifiable use of the Ombudsman's limited resources to continue to make inquiries with the Council.

Similarly, in regard to TasWater, I ultimately have not changed the position I articulated in my previous correspondence, that this long running dispute appears only to be able to be settled in court. Both parties have entrenched and incompatible views around the legal consequences of the historical anomalies surrounding the installation of the 100mm water meter and the resultant liability for associated charges. The Ombudsman is not able to make findings of fact regarding the events in and around 2003, which would be necessary to make a determination as to the reasonableness of TasWater's subsequent administrative decisions surrounding the connection. Without the ability to make findings of fact, as I have previously stated, TasWater is entitled to take a different legal view and its administrative action does not appear to be beyond the bounds of what is reasonable in this context. While I have significant sympathy for your situation, I do not consider that there would be justification for an Ombudsman investigation given the legal nature of the dispute and the alternative avenue of resolution through the courts. As stated in my earlier correspondence, I will make critical comments to TasWater about the failure to resolve this matter in a timely manner, with this dispute being ongoing for over 7 years now. While I appreciate that some of this period of spent trying to reach a resolution, it should still have been able to be settled (either through negotiation or court action) in a shorter period to provide certainty to all parties.

It appears that the situation will at least be resolved in future, with both you and TasWater agreeing that the TFS proposed solution of the relocation of the water meter at TasWater's cost should (subject to final approval) be workable. I received further information from TasWater in June 2020 in which it stated that it will not commence reviewing the viability of this work until there has been settlement of the current issues surrounding ownership and liability for charges in relation to the 100mm connection. I do not consider this best practice, as charges are continuing to accrue and an ongoing solution is desirable regardless of the outcome of the dispute. However, there is a major legal dispute and significant debt which TasWater is pursuing, so I do not consider the administrative concern relating to this issue to be sufficient to justify Ombudsman action on this point when court action is imminent. I will make comments to TasWater about the importance of it attempting to reach resolution where possible of outstanding issues in order to mitigate loss to all parties.

Overall

Accordingly, I am declining to investigate in accordance with section 21(1)(d) of the Ombudsman Act 1978, as this would be unnecessary or unjustifiable for the reasons set out above and in my previous correspondence. I am sorry that I have not been able to assist further in the resolution of this complaint, but I consider that it would not be appropriate to intervene at this late stage of a legal dispute.

I now intend to close your file, however if you remain concerned about my decision you may request a review by a senior officer of Ombudsman Tasmania. If you wish to do so, please contact ombudsman@ombudsman.tas.gov.au within the next 14 days to make that request.

I apologise again for the delay in providing this further response and wish you all the best in the resolution of this matter.

Yours sincerely



Leah Dorgelo
INVESTIGATION OFFICER

25 August, 2020

Ombudsman Tasmania
GPO Box 960
HOBART TAS 7001

By email only: ombudsman@ombudsman.tas.gov.au

Attention: **Leah Dorgello**

Dear Ms Dorgello,

Gilmour v TasWater
Matter No: O2001-127

I refer to your letter sent by email dated 20 August, 2020.

As you will appreciate, I am not happy your office is wiping its hands of this matter as *TasWater* continue to bully my wife and I as a small business operator for such exorbitant costs which (particularly in relation to the 100mm connection) have no foundation in law whatsoever. That said, I do not intend to engage in a protracted discussion regarding the *Ombudsman Act 1978* and how it permits you to investigate this matter if you so desired.

I do however wish to raise a couple of questions that arise from your abovementioned correspondence/decision for which I require some clarity and guidance:

1. I note your reference: *"I received further information from TasWater in June 2020 in which it stated that it will not commence reviewing the viability of this work (the Tasmanian Fire Service proposed solution) until there has been settlement of the current issues surrounding ownership and liability for charges in relation to the 100mm connection"*. I trust you can see from this single position taken by TasWater what we have been dealing with to date. A complete disregard for not only their customer (my wife and I) but an inability to understand that they have a legal duty to mitigate their losses before a Court in any litigious matter. The fact this is being sprouted by a monopolistic water corporation whom a court will hold as having 'model litigant' status beggars belief. I note you share our concerns in this regard. As you will appreciate, this is not an issue we can agitate moving forward as we will not get any traction (just has occurred with all other aspects of this matter). In light of this, is there anything your office can do to force TasWater to implement the agreed position moving forward, as they are clearly now acting in a vindictive manner against their customer that is also contrary to law? To this end I note your office is in place to both resolve complaints and improve the standard of Tasmanian Public Administration. By TasWater holding such a position they are clearly falling not just below a reasonable standard, but a legal one! Will you at least investigate this position to try and get us a resolution for future charges (if not the historical dispute)?
2. You state: *"...under the current TasWater Price and Service Plan, your water leaks should not be impacting on your ET charges."* What do you mean by this? TasWater use increased water usage as the way in which to calculate load on the sewerage

system and thus water lost through a leak causes ET charges to rise in subsequent billing periods. Can you explain your understanding of this issue in order for me to appreciate your finding in this regard?

3. You say you have received a response from Mr Shane Crawford, General Manager of the *Waratah-Wynyard Council*. I would like to see the correspondence you have received from Mr Crawford and the Council generally. Can you please provide me with a copy of this correspondence? If not, can you direct me to the process you have in place under the *Right to Information Act 2009* to obtain copies of same.
4. You have of course received communication from TasWater. As per the above, can you please provide me with a copy of this correspondence? If not, can you direct me to the process you have in place under the *Right to Information Act 2009* to obtain copies of same

I should make you aware that we have discussed this matter with our local Legislative Council Member (Ruth Forrest MLC) and will be providing the full file to the Inquiry into TasWater Operations as a prime example of the cultural and many other problems at TasWater.

Finally, as I have mentioned to you before, we are a 70 year old couple running a marginal business (t/o \$150,000 p.a.) who do not have the financial nor mental resources to continue this battle with TasWater. We feel mentally devastated that we have been put in this position by a monopoly organisation, noting in particular it is our hard work that has brought this matter to this point whereas TasWater have done absolutely nothing to resolve this dispute in a timely manner. I implore you to look at any possible way you can help us avoid going to court moving forward.

I look forward to hearing from you.

Regards,

Graeme Gilmour