OmbudsmanSA

FINAL REPORT

DISTRICT COUNCIL OF YORKE PENINSULA

October 2012

Ombudsman SA
PO Box 3651
Rundle Mall SA 5000

Telephone	08 8226 8699
Toll free	1800 182 150 (outside metro SA only)
Facsimile	08 8226 8602
Email	ombudsman@ombudsman.sa.gov.au

OmbudsmanSA

CONTENTS

OmbudsmanSA

Final Report

Full investigation - *Ombudsman Act 1972*

Agency	**District Council of Yorke Peninsula**
Date complaint received	**27 October 2011**
Issues	**1. The council has wrongly imposed a waste collection service charge for services which it is unable to deliver** **2. The council's imposition of the service charge had an unfair or unreasonable impact on the complainant**

Jurisdiction

The complaint is within the jurisdiction of the Ombudsman under the *Ombudsman Act 1972*, and under section 187B of the *Local Government Act 1999*, which provides as follows:

> (1) The Ombudsman may, on receipt of a complaint or on his or her own initiative, carry out an investigation under this section if it appears to the Ombudsman that a council's declaration of any rate or service charge under this Part may have had an unfair or unreasonable impact on a particular ratepayer.
>
> (2) The Ombudsman may, in carrying out an investigation under this section, exercise the powers of the Ombudsman under the Ombudsman Act 1972 as if carrying out an investigation under that Act.
>
> (3) If at the conclusion of an investigation under this section the Ombudsman makes an adverse finding against the council, the Ombudsman must prepare a written report on the matter.
>
> (4) The report may make recommendations to the council.
>
> (5) The Ombudsman must supply the council with a copy of the report, and may also publish the report, a part of the report, or a summary of the report, in such manner as the Ombudsman thinks fit.
>
> (6) If the report makes any recommendations as to action that should be taken by the council, the council must, within 2 months after the receipt of the report, provide a written response to–
>
> (a) the Ombudsman; and
>
> (b) if relevant, the person who made the complaint.

> (7) Without limiting the operation of any other section, a council may grant a rebate or remission of any rate or service charge, or of any charge, fine or interest under this Part, if the Ombudsman recommends that the council do so on the ground of special circumstances pertaining to a particular ratepayer.
>
> (8) This section does not limit other powers of investigation under other provisions of this or another Act.

I have dealt with the first issue as an investigation under the Ombudsman Act, and with the second issue as an investigation under section 187B of the Local Government Act.

On 25 November 2011 I advised the parties that I was treating the matter as a preliminary investigation under section 18(1) of the Ombudsman Act. This permits me to utilise the powers available under the Ombudsman Act for the purposes of investigating both issues. On 18 April 2012 I advised the mayor, as principal officer of the council, that I intended to conduct a full investigation of the complaint.

Because it is relevant to the first issue in particular, I note that as a result of a 1990 Supreme Court decision,[1] under the Ombudsman Act my office is not entitled to investigate matters of policy. However, I am entitled to investigate the administrative acts behind the creation of a policy by a state or local government agency.

The council put to me that this prohibition prevents me from investigating the policy behind the decision to declare the waste and recycling service charge. I do not agree with this suggestion. Indeed, I consider that section 187B in effect **requires** me to consider that policy, to determine whether it may involve an unfair or unreasonable impact on a particular ratepayer. In other words, the section confers a different jurisdiction from that conferred by the Ombudsman Act, although it empowers me to exercise the same powers as are available under the Ombudsman Act.[2]

Further, section 187B was inserted in the Local Government Act in 2005 (i.e. after the decision in *City of Salisbury and Biganovsky*) and commenced operation on 25 January 2007. The council put to me that:

> … the fact that the Supreme Court gave consideration to the Ombudsman's powers under the Ombudsman Act, does not mean that this is a preclusion to the application of this authority to the Ombudsman's powers under the Local Government Act.

It suggested that because in conducting an investigation under section 187B I only have available the powers conferred under the Ombudsman Act, this must mean that my ability to investigate a matter of policy is similarly limited. I do not agree with this submission. I consider that it ignores the express words of section 187B, which confer a new jurisdiction; and that if the Parliament had intended that I should simply exercise the same jurisdiction as under the Ombudsman Act, it would not have been necessary for it to enact section 187B.

Investigation

My investigation has involved:

- assessing the information provided by the complainant
- seeking a response from the council
- considering the public consultation report prepared by the council in introducing its Waste and Recycling Service Policy and Service Charge[3]

---

[1] *City of Salisbury v. Biganovsky* (1990) 54 SASR 117

[2] Further, section 187B was inserted in the Local Government Act in 2005 (i.e. after the decision in *City of Salisbury and Biganovsky*) and commenced operation on 25 January 2007.

[3] Dated February 2008

- considering the council's Waste and Recycling Service policy[4] (**the policy**)
- considering the report prepared for the Kerbside Waste and Recycling Review[5]
- considering relevant provisions of the Local Government Act and the Local Government (General) Regulations 2009 (**the regulations**)
- preparing a provisional report and providing it to the council for comment
- considering the council's response
- preparing a revised provisional report and sending it to the parties for comment
- considering the parties' responses
- preparing this report.

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.[6] It is best summed up in the decision as follows:

> The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved … .[7]

Responses to my revised provisional report

The complainant responded by letter dated 9 July 2012. I summarise as follows the principal points which he made:

- he is at somewhat of a disadvantage in responding as the council 'has unlimited access to legal advice'
- he considers that:

> if any service cannot be logically provided at the property gate then, as in some other Councils, a charge should not be applied.
> …
>
> Other councils in SA have seen this problem, understood it and exempted those that would be totally disadvantaged by this policy and relative charges associated with it.

- he notes that the wording of the motion passed at the 12 August 2008 council meeting refers to the imposition of the service charge on 'land to which it *provides* the prescribed service of waste collection' (emphasis in original). He considers that this wording precludes the imposition of the charge on properties that are not serviced 'at the ratepayer's gate' by the prescribed service
- he suggests that the council should:
    - write off all of the past charges and interest from 13 October 2008 to 30 June 2012
    - not be able to charge any amount if the prescribed service is not utilisable at the property gate

[4] Policy No PO125, adopted 11 March 2008
[5] Dated 24 February 2009
[6] This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at 449-450 per Mason CJ, Brennan, Deane and Gaudron JJ.
[7] *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

- move the current collection route 'from where it is currently servicing 4 properties to around the Cockle Beach Road where it could service 13 properties for only another 4 kms'.

The council responded through its legal advisers, by letter dated 19 July 2012. It made the following points:

- the difference of opinion between it and me is whether its imposition of the service charge had an unfair or unreasonable impact upon the complainant. This is a subjective judgement about which the council simply takes a different view
- the council disagrees that introducing a greater differential in the respective service charges for town and rural residents would result in a fair and reasonable charge. Its reasonable position based on the modelling, consultation and impact assessment is that its original differential was adequate to meet the test of fairness and reasonableness
- the council is unlikely to adopt my recommendation that it should recalculate the service charge due from the complainant for the period 13 October 2008 to 10 December 2011, and retrospectively apply the same sliding scale as is now set out in the regulations. It takes the view that it correctly followed the relevant legislative and administrative requirements in deciding to implement the service charge
- the council considers that my foreshadowed recommendation to recalculate the amount owed by the complainant and not for every other affected ratepayer would establish an inequitable outcome which the council does not wish to implement.

I have taken account of these comments as I consider appropriate in finalising my views.

Background

1. In October 2008 the council introduced a waste and recycling service charge (**the charge**) to cover the operating costs of its waste collection service. The service was established under the council's policy, which was adopted on 11 March 2008 and which provided for 'standard entitlements' as follows:

> Residential Properties within Town Service area - 1 Putrescible (140L) per week, 1 Recyclables (240L) per fortnight and 1 Green Organics (240L) per month i.e. '3 bin system'.
>
> Residential Properties within Rural Service area - 1 Putrescible (140L) per week, 1 Recyclables (240L) per fortnight at the designated pick up point determined by Council i.e. '2 bin system'
>
> Commercial /Industrial / Other / non-rateable Properties - 1 Putrescible (140L) per week, 1 Recyclables (240L) per fortnight at the designated pick up point determined by Council i.e. '2 bin system'.

2. The policy thus distinguished between properties within town and rural areas, both in terms of the number of bins provided to each property, and in identifying the point from which the bins were to be collected. For rural properties, residents were required to transport their rubbish bins to a local 'drop-off' collection site, which the collection truck then serviced. These residents were also required to arrange to retrieve their bins from the collection site.

3. The complainant is an Adelaide resident who has a holiday home at Cockle Beach, in the council area. His property is situated 3.5km from the nearest collection site. He states that he does not utilize the service, and he objects to the fact he has to pay the charge annually. He states that in fact he transports his garbage back to Adelaide, because he is not at his Yorke Peninsula property enough to be able to retrieve his bin

after garbage collection from the collection site. He states that if he were to utilize the service he would be more than happy to pay the charge.

4. The complainant asked the council for exemption from the charge on two occasions but was denied on both. He also made submissions to a review of the waste and recycling service conducted by the council in February 2009, and these were acknowledged by council.

5. The complainant made a point of paying his council rates deliberately short of the amount of the charge. This led to a high volume of communication between the council's finance department and the complainant, mainly about the overdue charges and fines incurred by not paying the initial charges. Ultimately the council decided to stop communications and engage a debt collection agency.

6. It appears to me that the complainant is the most vocal of the residents, but it is evident there are others unhappy with the charge. The complainant has mentioned there was a petition of 714 signatures against the charge, which was apparently not accepted at the relevant council meeting because of incorrect format. My office has also received 2 other complaints based on similar issues to those raised by the complainant.

7. One of the other complaints I have received is from a resident who lives 3.3 km from the nearest bin collection site. This resident disputes the charge as she insists there is no service being provided. She states she has not used the service at all in the years it has existed. It is unclear how she disposes of her waste. She has also applied for exemptions from the charge to no avail. It is unclear whether council has ignored her requests or responded and denied them. It seems she has also not paid the charges and has overdue amounts from the last few years. There has also been correspondence back and forth on this matter between the resident and the council. She submits she feels 'unfairly treated and harassed' about the charge.

8. The interested residents are in contact with each other, various Ministers and the Environment Protection Agency, and seem to be updated with legislative and policy changes.

9. The council has attempted to explain the situation to the complainant on a number of occasions but has not persuaded him of its views.

Whether the council has wrongly imposed a waste collection service charge for services which it is unable to deliver

10. Under section 151(5)-(8) of the Local Government Act, before a council changes the imposition of rates on land by declaring or imposing a separate rate, service rate or service charge on any land, it must prepare a report on the proposed change, and follow the relevant steps set out in its public consultation policy. [8]

11. In February 2008, the council published a consultation report proposing the introduction of the charge. The report outlines the reasons for the charge; the relationship of the charge to the council's overall rates structure; and provides an estimate of the annual cost per service for 3 bin and 2 bin services. It also addresses (albeit briefly) equity considerations within the community.

12. The council published notice of the report in the local and Adelaide press; and made the report available for inspection from any council office and downloadable from its website. It appears to me that in preparing and publishing the report, the council met its

[8] District Council of Yorke Peninsula - Public Consultation Policy PO 057

obligations under section 151(5)-(8) of the Local Government Act, and its public consultation policy.

13. The council also sought legal advice about the imposition of the charge. It has provided me with a copy of advice dated 29 August 2008 which confirms that 'the council's actions are within the law as set out in the *Local Government Act 1999*'. The advice goes on to observe that the issue about differentiation and apportionment of the service charge on a fairness and equity basis (or otherwise) is a matter for the council to determine having regard to its accountabilities to its ratepayers.

14. In the event, the council decided to impose the charge. At its meeting on 12 August 2008 a motion in the following terms was carried:

> Pursuant to Section 155 of the Local Government Act 1999 and for the financial year 1 July 2008 to 30 June 2009 the council declares an annual service charge upon both rateable and non-rateable land to which it provides the prescribed service of waste collection (the Waste and Recycling Service) which charge is based upon the nature and level of usage of the service and is declared at $130 for a two (2) bin service and $145 for a three (3) bin service for the period of the week commencing Monday 13 October 2008 to 30 June 2009 or pro rata the annual service charge where the service commences at a later date than the week beginning 13 October 2008.[9]

15. The imposition of the charge was the subject of criticism. Accordingly the council decided to conduct a review of its operation. It prepared a report for consideration by a working party, notably at a meeting held on 24 February 2009. I note that this report canvassed at some length how other councils had dealt with this issue.

16. The original legislative authority for the imposition of the charge is section 155 of the Local Government Act, which at the time of the charge's imposition provided as follows:

> **155—Service rates and service charges**
>
> (1) In this section—
> ***prescribed service*** means any of the following services:
> (a) the treatment or provision of water;
> (b) the collection, treatment or disposal (including by recycling) of waste;
> (ba) a television transmission (or retransmission) service;
> (c) any other service prescribed by the regulations for the purposes of this definition.
>
> (2) A council may impose—
> (a) a service rate, an annual service charge, or a combination of a service rate and an annual service charge, on rateable land within its area to which it provides, or makes available, a prescribed service;
> (b) an annual service charge on non-rateable land to which it provides, or makes available, a prescribed service.
>
> (3) A service rate, or annual service charge, may vary—
> (a) according to whether the land to which it applies is vacant or occupied; or
> (b) according to any other factor prescribed by the regulations and applied by the council.
>
> (4) If a council provides more than one prescribed service of a particular kind in its area, a different service rate or annual service charge may be imposed in respect of each service.
>
> (5) A council must not seek to recover in relation to a prescribed service an amount by way of service rate, annual service charge, or a combination of both exceeding the cost to

[9] Item No 23.3 Service Charge for new Waste and Recycling Service. Motion 193/2008 moved by Cr Bowman and seconded by Cr Nicholls. Carried

the council of establishing, operating, maintaining, improving and replacing (including by future capital works and including so as to take into account the depreciation of any assets) the service in its area (being a cost determined taking into account or applying any principle or requirement prescribed by the regulations).

(6) Subject to subsection (7), any amounts held in a reserve established in connection with the operation of subsection (5) must be applied for purposes associated with improving or replacing council assets for the purposes of the relevant prescribed service.

(7) If a prescribed service under subsection (6), is, or is to be, discontinued, any excess of funds held by the council for the purposes of the service (after taking into account any expenses incurred or to be incurred in connection with the prescribed service) may be applied for another purpose specifically identified in the council's annual business plan as being the purpose for which the funds will now be applied.

(8) An annual service charge may be based on–
(a) the nature of the service; or
(b) the level of usage of the service; or
(c) any factor that applies under subsection (3); or
(d) a combination of 2 or more factors under the preceding paragraphs.

(9) A service charge imposed by a council under this section is recoverable as if it were a rate (even as against non-rateable land).

(10) A council may declare a service rate or an annual service charge in respect of a particular prescribed service despite the fact that the service is provided on behalf of the council by a third party.

17. During the course of the debate between the complainant and the council about his liability to pay the charge, the government introduced the *Local Government (Accountability Framework) Amendment Bill 2009* to the Parliament. This Bill proposed the introduction of the following new subsection in section 155:

> (11) If a prescribed service, in relation to a particular piece of land, is not provided at the land and cannot be accessed at the land, a council may not impose in respect of the prescribed service a service rate or annual service charge (or a combination of both) in relation to the land unless the imposition of the rate or charge (or combination of both)–
>
> (a) is authorised by the regulations; and
>
> (b) complies with any scheme prescribed by the regulations (including regulations that limit the amount that may be imposed or that require the adoption of a sliding or other scale established according to any factor, prescribed by the regulations, for rates or charges (or a combination of both) imposed under this section).

18. This provision was enacted and commenced operation on 10 December 2011. It has been supplemented by amendments to the regulations, which were gazetted on 10 May 2012. New regulation 9B(2) sets out the applicable sliding scale, as envisaged by section 155(11)(b) of the Act.[10] In my view these new provisions operate to permit the

[10] **9B–Rates and charges for services not provided at the land**

(1) For the purposes of section 155(11), a council is authorised to impose a service rate or annual service charge (or a combination of both) for a prescribed service in respect of the collection of domestic waste in accordance with the scheme set out in subregulation (2).

(2) For the purposes of subregulation (1), the following provisions apply to the imposition of rates or charges in relation to a particular piece of land:
(a) if the prescribed service is provided no more than 500 metres from the access point to the land–the full service rate or annual service charge (or a combination of both) may be charged for the prescribed service;
(b) if the prescribed service is provided more than 500 metres but no more 2 km from the access point to the land–75% of the service rate or annual service charge (or a combination of both) may be charged for the prescribed service;
(c) if the prescribed service is provided more than 2 km but less than 5 km from the access point to the land–50% of the service rate or annual service charge (or a combination of both) may be charged for the prescribed service;

council to impose a service charge on the complainant after 1 July 2012, which is calculated in accordance with the formula in the regulations.

19. The issue for my investigation is therefore whether the council acted wrongly in imposing the charge between the date of its original imposition and 10 December 2011.

20. Based on the facts outlined above, I consider that the council correctly followed the necessary legislative and administrative requirements in deciding to implement the service charge; in carrying out that implementation; and in reviewing the operation of the service.

21. Nonetheless, for the reasons which I explain below I consider that the effect of the charge on rural ratepayers whose land was not directly serviced was disproportionate. I note also that the government subsequently took the view that the council was ill-advised to introduce a charge which applied to land which was not directly serviced.

22. However, both the council's original decision to impose the charge for the service as proposed by the policy, and the government's subsequent decision to introduce amending legislation to prevent the imposition of the charge in this form in future, are matters of policy. As noted above, under the Ombudsman Act my office is not entitled to investigate matters of policy.

Opinion

In my opinion, in imposing the service charge the council did not act in a manner that was unlawful, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

Whether the council's imposition of the service charge had an unfair or unreasonable impact on the complainant

23. In addition to alleging in effect that the council fell into administrative error in the imposition of the service charge, the complainant has alleged under section187B of the Local Government Act that the charge had an unfair or unreasonable impact upon him. In considering this issue, I have available all the powers under the Ombudsman Act, but the issue which I must address is different from (and more limited than) considering whether an administrative error within the meaning of the Ombudsman Act arises.

24. In other words, I consider that it is possible that a charge may be properly imposed (i.e. without administrative error), but that it may still have an unfair or unreasonable impact upon a ratepayer. I observe that in considering whether this situation exists, I may be expressing a view which is essentially one of policy. However, the prohibition identified by the Supreme Court[11] on me doing so arises only under the Ombudsman Act, not the Local Government Act.

25. In this case, the complainant suggests that the charge had an unfair or unreasonable impact upon him because he could not effectively avail himself of the service for which the charge was imposed. He considers that whilst the council did not prohibit him from

---

(d) if the prescribed service is provided 5 km or more from the access point to the land—no rate or annual service charge may be charged for the prescribed service (but nothing in this paragraph prevents a council from entering into an agreement for the provision of a prescribed service in respect of the collection of waste that involves the payment of an amount for the provision of the prescribed service).

(3) In this regulation—
access point means the point on the land where the land is generally accessed;
domestic waste means waste produced in the course of a domestic activity.

[11] Ibid

accessing the waste collection service, it provided the service in such a way that he was effectively precluded from using it.

26. I consider that the complainant's case is persuasive, but not for the reasons which he advances. In my view, the fact that the complainant is not a permanent resident of the area, and finds it inconvenient to make use of the service provided by the council, does not establish that the impact of the charge on him was unfair or unreasonable. The service charge attaches to property, and in my view the council should not have been required to have regard to the extent to which a property was occupied in determining the level of the charge.

27. The council put to me that the correct legal test to determine whether the service charge had an unfair or unreasonable impact upon the complainant is not whether the complainant's land was **directly serviced**, but whether the service was **provided** or **made available** to him. This may be so, but I do not consider that this test assists in answering the question which I am required to determine under section 187B. That question is simply whether the rate or service charge had an unfair or unreasonable impact upon a ratepayer. It does not matter whether the ratepayer's land was directly serviced, or whether the service was simply provided or made available to the ratepayer.

28. The council also put to me that in considering what is an unfair or unreasonable impact, regard must be had to the statutory scheme. It notes that section 155(8) allows an annual service charge to be based on the nature of the service; the level of usage of the service; any factor that applies under section sub-section 155(3); or any combination of 2 or more of these factors. It notes also that in this case it imposed the service charge 'upon the nature and level of usage of the service'. I accept that this is so.

29. The council decided to introduce a service to rural ratepayers which was more limited than for town ratepayers (by providing 2 bins not 3); and to which access was considerably more inconvenient than for town ratepayers (by requiring rural residents to deposit and collect bins from a collection site). Town residents receive a green waste collection, which rural residents do not.

30. The council has stated that the additional charge levied on town as compared to rural ratepayers (i.e. $130 as opposed to $145) represents 'the cost of the green waste collection service, [which] is added to the cost of the 2 bin service that is made available to all properties both within the township and outside the township'. It has provided me with the financial calculations which demonstrate this point.

31. However, in my view this calculation recognised the differing impact only in relation to the green waste collection service, not in relation to the requirement for rural residents to deposit and collect bins from a collection site. It follows that in my view the charge had an unfair or unreasonable impact on all rural ratepayers, not simply those who choose not to avail themselves of the service.

32. Had the council decided to introduce a greater differential in the respective service charges for town and rural residents (i.e. to reflect the added inconvenience for rural ratepayers) the opportunity for the complainant to argue that he - or indeed any rural resident - was unfairly or unreasonably impacted by the service charge would have been considerably reduced. However, in all the circumstances of this case I am of the view that the service charge had an unfair or unreasonable impact on the complainant as a rural resident of the council's area.

33. The council put to me that my view represents 'an arbitrary approach with no evidence proffered in support'. It states that it reached the amount to be charged after 'thorough

formulation and serious consideration', having regard to the costs of the service. I accept that this is so. However, it is necessarily the case that a judgement as to what is unfair or unreasonable will involve an element of subjectivity. The council has provided me with evidence that the additional cost of the green waste collection service was the only basis upon which it sought to distinguish between the costs of the service for 3 bin and 2 bin (i.e. town or rural residential) recipients of the service. In my view the council's approach of giving no weight to any other relevant factors, such as the inconvenience caused to rural rate payers having to deposit and collect bins from a site at some distance from their land, demonstrates a rigid interpretation of its role in avoiding an unreasonable or unfair outcome for individual rate payers.

34. The council also put to me that under the regime introduced under the new section 155(11) and regulation 9B of the Local Government (General) Regulations:

> … the council is able to declare the imposition of the annual service charge for the 2012/13 financial year to those properties where the service is not provided and cannot be accessed at the land subject to the prescribed sliding scale. This means the complainant will be subject to a proportion of the waste and recycling service charge post 1 July 2012.

I agree that this so, and I note that the new 'sliding scale' regime is calculated on the basis of the distance from the access point to the land, to the point at which the prescribed service is delivered. In this way it overcomes what I consider to be the unfair and unreasonable impact of the original service charge on rural residents.

Opinion

In my opinion, the imposition of the service charge had an unfair or unreasonable impact on the complainant, within the meaning of section 187B(1) of the Local Government Act.

Recommendations

Having regard to the circumstances of the case, I recommend that the council should recalculate the amount of the service charge due to it from the complainant for the period from 13 October 2008 when the service charge was imposed, to 10 December 2011 when the amendment to section 155 of the Local Government Act commenced operation. This recalculation should apply the same 'sliding scale' as is now in force under regulation 9B.

I recommend also that the council should write off the difference between the recalculated amount and the service charge and fines accrued by the complainant between 13 October 2008 and 10 December 2011.

Further, I recommend that the council should consider the suggestion made by the complainant about changing the current collection route in his area i.e. to move the route 'from where it is currently servicing 4 properties to around the Cockle Beach Road where it could service 13 properties for only another 4 kms'; and should provide reasons as to whether it considers this suggestion feasible.

Final comment

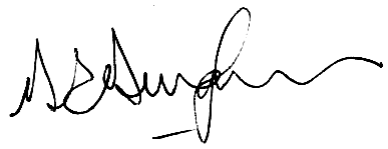
I note the council's response to my revised provisional report that:

- it is unlikely to adopt my recommendation that it should recalculate the service charge due from the complainant for the period 13 October 2008 to 10 December 2011

- it considers that my foreshadowed recommendation to recalculate the amount owed by the complainant and not for every other affected ratepayer would establish an inequitable outcome which the council does not wish to implement.

In accordance with section 187B(6) of the Local Government Act, I request that the council report to me within 2 months of the receipt of this report (i.e. by 30 September 2012) on what steps have been taken to give effect to my recommendations above; and, if no such steps have been taken, the reason(s) for the inaction.

In accordance with section 187B(5) of the Local Government Act I intend to publish this report by seeking to have it tabled in Parliament, and I foreshadow that I will draw attention to my recommendations in this case. These recommendations are necessarily limited to the factual circumstances of the complainant, and hence do not deal with whether any other ratepayer was unfairly or unreasonably impacted by the imposition of the service charge. However, I intend to make the point that other ratepayers may wish to approach the council seeking reconsideration of their situation accordingly.



Richard Bingham
SA OMBUDSMAN

30 July 2012