



Hawkesbury City Council

ordinary
meeting
business
paper
supplementary

date of meeting: 7 May 2002

location: Council Chambers

time: 7.00pm

ORDINARY MEETING

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for determination

ITEM: 42 Legal Costs - Request for Assistance**FILE NUMBER:** GL001/005 Pt3/GMA/ORE07LAX.G13

REPORT:

Section 611 of the *Local Government Act* allows a council to make an annual charge on a person that is in possession, occupation or enjoyment of a rail, pipe, wire, pole, cable or structure laid, erected, suspended, constructed or placed on or over a public road. The section does not apply to the Crown, Sydney or Hunter Water Corporations, the Rail Access Corporation or the owner/operator of a light rail system where this is excluded and some electricity utilities.

Some years ago a number of Sydney councils raised charges against Telstra and Optus, with a resulting challenge by the two corporations in the Federal Court on the basis that the Australian Constitution limited power to impose the charge: the charge was discriminatory against providers of telecommunication services and that the councils involved were motivated by improper purposes.

There was subsequently action in the Federal Court where Justice Wilcox handed down a decision in favour of the councils. There was an appeal to the Full Federal Court that found in favour of the two corporations on the basis that the section of the *Local Government Act* discriminates or has the effect of discriminating against a carrier or carriers generally under the *Telecommunications Act* and was inconsistent with the Constitution and ordered the respondents to pay the appellant's costs.

In relation to the Constitution, the Court found that the power to licence a corporation to provide telecommunication services and to empower that Corporation to carry out those activities in particular ways included the power to protect the Corporation when it carries out those activities.

In relation to the discrimination, the Court found that the State laws were discriminatory where they permitted a tax or charge to be imposed upon a carrier in respect of certain of its activities on the occupation of a public place by underground or aboveground cables, but did not impose that tax/charge on other bodies that made similar use of public places such as electricity, gas or water utilities which lay pipes or cables under or above public places to transmit their "goods". The Court states "It is discrimination against the carrier because it accords to it less favourable treatment than to the other occupiers of public space".

It might be noted that in New South Wales section 611 charges do stand for gas providers and this Council currently receives in the order of \$18,000 (eighteen thousand dollars) per annum for the gas utility to occupy public space.

The Court was also critical of the New South Wales councils, indicating that many if not most of the councillors involved in setting the charge were motivated by a desire to encourage telecommunication carriers to place their cables underground.

The Local Government Associations who are acting on behalf of the councils have sought advice on the likely costs and prospects of success in mounting an appeal to the High Court. Their advice from Senior Counsel and from the former Solicitor-General of the Commonwealth, Sir Maurice Byers, believes there is a strong case and that the Appeals Judges erred. They have sought, in accordance with their formula, a contribution from Hawkesbury of \$4,646 (four thousand six hundred and forty-six dollars).

The Act permits the Council to make the charge against the two corporations, as was agreed by the Federal Court in the first action and it is quite clearly open to Government, should it so wish and consider it necessary, to exempt them (the carriers) from the provisions.

It is the principle of the matter that while the provisions in the Act remain and allow the charge to be made that councils, as an entity of Government, should have the abilities to proceed as a statutory right as the representatives of the owners of the public spaces occupied. In the circumstances it is recommended that Council endorse the action and contribute the requested funds.

RECOMMENDATION:

That Council contribute \$4,646 (four thousand six hundred and forty six dollars) to the Local Government Association as its contribution to the mounting of a High Court Appeal in the matter of the charges made under the *Local Government Act* against the telecommunication carriers Telstra and Optus.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 42 Oooo

ORDINARY

Meeting Date: 7 May, 2002

Item: **43**

ITEM: 43 **Governor Phillip Reserve, Windsor - Upper Hawkesbury Power Boat Club - Amendments to 2002 Racing Calendar**

FILE NUMBER: PK/205 PT8/ENG/ORE07LBX.E12

PREVIOUS ITEM: 146, Ordinary (11.12.2001)

REPORT:

The Upper Hawkesbury Power Boat Club has advised the following amendments to its 2002 Racing Calendar, adopted by Council at its meeting held on 11 December 2001:

Saturday 15 June 2002	Additional non-exclusive date to conduct the Australian and NSW Championships.
Sunday 11 August 2002	Now scheduled as Bridge to Bridge event requiring exclusive use, in lieu of Club Day as previously approved.

Amendments comply with Council policy regarding use of the reserve.

RECOMMENDATION:

That approval be granted to the above amendments, subject to compliance with standard conditions imposed at Council's Ordinary Meeting held on 11 December 2001.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 43 Oooo



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