

**Budget Estimates 25 October 2023
Questions on Notice**

QUESTION 1 (p81):

The Hon. DAMIEN TUDEHOPE: Ms Crawford, returning to you, could I ask you some questions about the Central Coast Council? You provided unmodified or unqualified—I don't know whether "modified" or "unqualified". Are they interchangeable?

MARGARET CRAWFORD: Qualified. Modified is qualified.

The Hon. DAMIEN TUDEHOPE: So unmodified is unqualified?

MARGARET CRAWFORD: Yes.

The Hon. DAMIEN TUDEHOPE: So you did provide unqualified audit reports—that's an expression I use more often—for Central Coast Council for the years 2016-17, 2017-18 and 2018-19, that's correct?

MARGARET CRAWFORD: From memory, yes. I probably should take it on notice because I don't have that information in front of me, but from memory.

RESPONSE: Unqualified audit opinions were issued for the years ended 30 June 2017, 30 June 2018 and 30 June 2019.

QUESTION 2 (P82)

The Hon. DAMIEN TUDEHOPE: Effectively, if it's restricted money, it's not the council's money. You, in fact, when you provided an unqualified report in respect of that council, gave that council a pass.

MARGARET CRAWFORD: I'm not agreeing with the point you're making. We followed—well, I might ask Ian to go into more detail. He's probably had the opportunity to look back at the report.

IAN GOODWIN: Thank you. I'd probably just look to first point out that this matter was covered in the Auditor-General's report called Report on Local Government 2020. That report should be able to provide you the answer to the question. There was something unique about Central Coast Council. The water, sewerage and drainage arrangements for Central Coast Council are quite unique to all other councils in New South Wales. They are regulated under the Water Management Act where they operate because they operate a water supply authority. For other councils, these arrangements are regulated under the Local Government Act. That makes Central Coast a little bit unique in terms of how that was done.

The issue around the financial audit—the financial audit is opining on whether the financial statements are true and fair, for want of a term. You mentioned the question of insolvency. My recollection on it—and we would have to take this on notice—is that we did not raise an issue around going concern, which goes to the question of insolvency. There was a very complex matter, though, around the treatment of whether the moneys were restricted or not restricted. There was a number of legal opinions that were sought. One of those opinions was from the Crown Solicitor's Office, and that opinion is appended to that local government report that the Auditor-General tabled.

RESPONSE:

As noted in the response, the issue around Council's use of restricted funds was included in the 'Report on Local Government 2020' tabled in Parliament on 27 May 2021. An extract of the reporting is included below.

The Independent Auditor's Report included an Emphasis of Matter to draw attention to the 'Going Concern' disclosures within Council's financial statements which describes the financial statements as having been prepared on a going concern basis. The audit opinion was not modified in respect of this matter.

START OF EXTRACT

Report on Local Government 2020

Accounting for water and sewerage restricted funds (restricted reserves)

The water, sewerage and drainage arrangements for Central Coast Council are unique compared to all councils in New South Wales, as they are regulated under the Water Management Act 2000 (Water Management Act) when they operate as a water supply authority. For all other councils, these arrangements are regulated by the Local Government Act 1993 (Local Government Act).

Prior to the 2017 merger, both the Wyong Shire and Gosford City Councils operated water supply authorities to deliver water, sewerage and drainage services. This continued when the councils were amalgamated, and the Central Coast Council was established as a water supply authority.

The former Wyong Shire and Gosford City Councils determined that cash, cash equivalents and investments associated with their Water Supply Authority's operations were 'unrestricted'. The former councils' final financial statements for the period ended 12 May 2016 disclosed these amounts as unrestricted cash, cash equivalents and investments in the relevant note disclosures.

The decision was based on the councils being regulated by the Water Management Act when operating as a water supply authority. The Water Management Act has no explicit restrictions stating how money raised through charges levied under the Water Management Act are to be used. This is in contrast to money raised through charges for water and sewerage levied under the Local Government Act.

On 21 December 2016, Central Coast Council formally adopted the audited 2015–16 financial statements for the former Wyong Shire Council and the former Wyong Shire Council Water Supply Authority. The resolution to adopt the financial statements included the following paragraph:

On review of Council's current restrictions for its water and sewer operations, Council has de-recognised certain cash, receivable and payable restrictions, in line with the current restriction disclosures recorded in the Financial Statements of Wyong Water. This change was corrected in the prior period in accordance with AASB 108 Accounting Policies, Changes in Accounting Estimates and Errors.

These financial statements were then submitted to OLG in their capacity as the regulator of local councils.

The interim administrator's 30-day interim report on 2 December 2020 stated that, in his opinion, the Water Fund Externally Restricted Reserves and the Sewer Fund Externally Restricted Reserves were both understated. He appears to have taken this view because he did not believe that the approach taken by the former administrator in 2016 and formally adopted by the merged council was lawful. Because of these two different views, the Audit Office asked the NSW Crown Solicitor to provide an opinion on the following question:

Is the money received under the Water Management Act considered 'externally restricted funds' under s. 409(3) of the Local Government Act?

The NSW Crown Solicitor's preferred view, noting that view is not without doubt, is that 'monies received by the Central Coast Council as a result of charges levied in its capacity as a water supply authority under the Water Management Act should be held in the Council's consolidated fund as 'externally restricted funds'. The NSW Crown Solicitor said:

Whilst not without doubt, I prefer the view that money received under the WM Act is within the scope of s. 409(3) of the LG Act. The Central Coast Council is, as noted above, a WSA under the WM Act and specifically it is a statutory body named in Part 2 of Schedule 3 of that Act as such. Per s.287(2) of the WM Act, it therefore 'becomes a water supply authority but still has its other functions'. That is, it retains its character as a council under the LG Act.

For monies received under the Water Management Act by the Central Coast Council to be considered as 'externally restricted funds', the money must be captured by the provision in either section 409(3)(a) or section 409(3)(b) of the Local Government Act.

In support of her preferred view, the NSW Crown Solicitor notes in respect of s409(3)(a):

Although not without doubt, I prefer the view that s. 409(3)(a) should be read in its full generality and not confined as relating only to special rates or charges levied under the Local Government Act.

On balance, I prefer the view that s. 409(3)(a) could apply to money received pursuant to the Water Management Act.

Further the NSW Crown Solicitor notes in respect of section 409(3)(b):

Section 409(3)(b) of the Local Government Act may apply to monies collected pursuant to the Water Management Act if the conditions in that paragraph are satisfied.

...it is difficult to envisage that there is very much scope for discretion in the spending of monies collected pursuant to the Water Management Act....the whole legislative scheme as applying to the Central Coast Council in its capacity as a water supply authority acts to restrain and control the ways in which it raises money for its operations.

This means that the NSW Crown Solicitor's preferred view supports the position taken by the current administrator.

However, the NSW Crown Solicitor's advice reflects the complexity of this issue and notes that the 'preferred view' is not without doubt. In doing so, the NSW Crown Solicitor also noted that there is an alternative view.

The NSW Crown Solicitor says in respect of section 409(3)(a):

However, the contrary view that s. 409(3)(a) is confined to special rates and charges levied under the LG Act, is not without merit. In particular, I have considered that the concept of a 'special rate' is a creature of the LG Act and a term with a clear meaning in the context of that Act specifically. Whilst this is not also true of the concept of a 'charge', for which many provisions in other Acts provide, I am not sure that a charge in any other Act would necessarily be associated with use for a specific purpose, in the way that paragraph (a) assumes and which I consider applies in the context of the LG Act.

The NSW Crown Solicitor goes on to say in respect of section 409(3)(b):

I have not located any express provisions in the Water Management Act which restrict the way that money collected under the Water Management Act can be spent, in a way which is comparable to the effect of s. 409(3) of the Local Government Act.

As outlined by the NSW Crown Solicitor, there is merit to the argument that money received under the Water Management Act is not externally restricted for the purposes of the Local Government Act.

The NSW Crown Solicitor has confirmed that the 2016 position adopted by Council was not without merit and that there was an arguable position that the water and sewer funds were not restricted.

The Audit Office met with staff from OLG to confirm if there were any other legal instruments or directions that could influence the facts as presented in the NSW Crown Solicitor's advice. OLG has confirmed that there are no other legal instruments or directions that would alter the Crown Solicitor's advice.

The current administrator has advised that they have received a legal opinion from a private sector firm. The private sector firm's opinion has not been made available to the Audit Office.

Accounting implications for the financial statements for the periods ended 12 May 2016 and 30 June 2017, and years ended 30 June 2018 and 2019

It is the responsibility of management, with the oversight of those charged with governance, to prepare financial statements in accordance with the relevant requirements. A misstatement in the financial

statements can occur when there is a clear non-compliance with a prevailing law or regulation that impacts the reported amounts or disclosures.

In the final Wyong Shire Council and Gosford City Council financial statements for the period ended 12 May 2016, the councils reasonably argued that water, sewerage, and drainage funds collected by Wyong Shire Council and Gosford City Council as water supply authorities were not restricted. The then auditors accepted this position. This interpretation of the relevant Acts was also applied in the Central Coast Council financial statements for the period ended 30 June 2017 and years ended 30 June 2018 and 30 June 2019.

As there are reasonably arguable interpretations of the relevant legislation, as described by the NSW Crown Solicitor in the preferred and alternative views, there was, in our view, no 'non-compliance' with the prevailing laws and regulations when Wyong Shire Council and Gosford City Council determined to treat certain funds as not 'restricted'. Therefore, the treatment in prior years was not an 'error' as defined by AASB 108 'Accounting Policies, Changes in Accounting Estimates and Errors', and the externally restricted funds disclosed in the financial statements of the Central Coast Council for the period ended 30 June 2017 and years ended 30 June 2018 and 30 June 2019 were not materially misstated.

The uncertainty created by more than one reasonably arguable legal interpretation is acknowledged. However, oversight of compliance with legislative requirements highlights a continuing governance risk for the Central Coast Council. Our recent performance audit 'Governance and internal controls over local infrastructure' highlighted that Central Coast Council also breached the Environmental Planning and Assessment Act 1979 between 2001 and 2019 when it used developer contributions for administration costs.

END OF EXTRACT