

## Has the council been overcharging ratepayers?

No.

The council's sources of revenue are government funding, rates and fees and charges.

Fees and charges vary from council to council but can include water, refuse, sewage or other prescribed service. The latter can include such things as parking or a retail activity charge.

As allowed under the Local Government Act (section 162b) and covered in the Ombudsman's Report (p6, s19), the council's waste management charge is an annual service charge for "the collection and disposal of refuse".

As the Ombudsman states, there is no wording in the Act to expressly state the extent the charge must reflect the cost. (Ombudsman's Report April 2018 p6, s20).

These funds are used for the collection of kerbside bins as well as waste-related services including supply and maintenance of public bins, street sweeping, cigarette disposal bins, waste transfer station operations, landfill rehabilitation and various litter and cleaning undertaken by our parks and garden teams across parks, playgrounds and recreation precincts.

## Has the council been hiding this information from the public?

No. The Ombudsman's report recognises that the council undertook consultation process in accordance with the Act in bringing together the Rating Strategy in 2010 and again undertook "extensive consultation" to review it in 2015 (Ombudsman's Report, April 2018, pp12-13). The rating strategy groups include community membership and the strategy can be found on the council's website.

The council has shared information on the rating strategy and the budget with the community through a range of methods including the budget documents, on its website and its various communications channels.

Documents are made publicly available each year as part of the draft budget process and five years' of budget documents are available on our website.

The council recognises it could have improved the description of the waste charges on its rates notice and is in the process of changing the way this is reflected.

## But why did the Victorian Ombudsman say it was "wrong"?

In conducting an official investigation, the Victorian Ombudsman's Act 1973, the Ombudsman can make finding that an administrative action:

- (a) appears to have been taken contrary to law;
- (b) was unreasonable unjust oppressive or improperly discriminatory;
- (c) was in accordance with a rule of law or a provision of an enactment  
or practice that is or may be unreasonable unjust oppressive or improperly discriminatory;
- (d) was taken in the exercise of a power or discretion, and was so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations;
- (e) was a decision that was made in the exercise of a power or discretion and the reasons for the decision were not, but should have been, given;
- (f) was based wholly or partly on a mistake of law or fact; or
- (g) was wrong.

It's the Ombudsman's opinion that what the council did was "wrong".

However, the report also states that the council did not breach the Local Government Act or do anything illegal.

A similar inquiry into the waste management charge by the Victorian Auditor General's Officer determined the council had complied with the Local Government Act and had been transparent with the community.

Of the Ombudsman's two recommendation in the report, only one applied to the council which it has already indicated to the Ombudsman it would accept.

That was that the council reduce its waste management service to only recover the reasonable costs of the collection and disposal of refuse within three years of the investigation's finalisation (Ombudsman's Report, April 2018, p22).

A second recommendation was that Local Government Victoria consider recommending that section 162 of the Act be amended to require that charges for the collection and disposal of refuse

reflect the reasonable cost of providing that service (Ombudsman's Report, April 2018, p22).

The council also supported this recommendation and has made a submission to the government in regards to the draft of the new local government act supporting an amendment that clarifies the nature of the service charge for the "collection and disposal of refuse".

## **So does the council accept the recommendation?**

In working with the Ombudsman, the council has already accepted her recommendation for the waste charge to reflect the reasonable cost of the service within three years of her report.

As the Ombudsman has also stated in her report (Ombudsman's Report, April 2018, Foreward, p3), 72 of the 79 Victorian council have separate waste charges.

This is why the council has supported further clarity for section 162 in the Act and recognises there could be wider implications from this report.

The council will address this as part of its annual budget processes and work with the Essential Services Commission and Local Government Victoria as it moves forward, clarifying what "reasonable cost" will mean to councils and ensuring we can continue to meet our community's needs.

A new Rating Strategy group will be formed and rates notices revamped to better reflect the waste charges.

## **But will ratepayers get a refund?**

Suggesting ratepayers receive a refund the funds were in excess of what was required by the council to undertake its operations. This is not the case.

The funds have been used for community services in keeping our city and parks and reserves safe and clean for our community to enjoy.

In all of the council's budgets since 2002, the council determined to use waste management funds to pay for those essential services including the move from landfill to a waste transfer station, cleaning up after events, collection and disposal of litter and debris from public places and environmental lands. This is included in the Ombudsman's Report at Appendix A.

Throughout the past decade, the council has relied on that funding to undertake essential services and

if it wasn't sourced through a waste charge, it could have otherwise been raised through higher rates or a municipal charge.

## **Why wasn't anyone told about the investigation?**

The Ombudsman investigates when it receives a complaint or disclosure. At that time it makes inquiries before considering whether to launch an official investigation.

As stated in the report, the Ombudsman received a complaint in June 2016. It made contact with the council as a general inquiry in October and November 2016 at the time of the council elections.

In March 2017, it notified its intention to conduct an official investigation.

The investigation and the presentation of a draft report is conducted under strict confidentiality as set out in the Ombudsman's Act.

The councillors were briefed on several occasions in relation to the ombudsman's investigation.

The councillors were briefed on April 10, 2017 regarding the notification to the council by the Ombudsman of an investigation into the waste management levy. At that time, the councillors were told that the investigation could be subject to a private ruling or tabled in Parliament.

On June 26, 2017, the councillors received an update from the CEO and Director on a meeting held with the ombudsman to discuss the investigation.

The councillors received a written report on September 4, 2017 with background and a full briefing on the investigation.

On March 5, 2018, the councillors were provided with another report updating them on the status of the investigation and an outline of a response to the ombudsman as well as relevant sections of the Ombudsman's Act regarding the confidentiality of the investigation and draft reports. Another report was provided on March 19, 2018.

The final report was made available from the ombudsman's office to the council on the afternoon before it was tabled to Parliament. The councillors were made aware of the report and the fact it was due to be tabled to Parliament and provided copies of the report.