

Executive Summary

LLCP agreed to buy the Seabreeze Caravan Park in October 2004 on the condition that the then On Site Sewerage Management System (OSSMS) upgrade then underway be completed, inspected and approved by Council and that the park then be inspected, approved and a new 5 Year Operating License be issued by Council. If any of these conditions were not met the purchase of the park would not proceed.

Contracts were exchanged with these conditions contained in the contracts in December 2004 with a 6 month settlement period.

The OSSMS upgrade then underway was completed in early April 2005, inspected and approved by Council Sewerage Officer Gavin Spring.

The park had a new 5 Year Unconditional Operating License issued on 27 April 2005 signed off on by Council Licensing Officer Vince Hunt.

LLCP Pty Ltd then proceeded to settle and took over the running of the business on 19 May 2005.

Within days effluent was discharging from the reed bed pump well.

Installation Plumber Elan Christian of Trouts New World Plumbing was called who replaced the existing 25 litre per minute pump with a second hand one. When asked why it was not replaced with a new one he said quote: "not my problem, I already installed a 300 litre per minute pump which burnt out straight away because Gavin Spring changed the Sewerage Engineers Design (J J Bruce) in the Wisconsin Mound Land Application Area (LAA) from 25mm PVC with 3mm holes every metre in 100mm socked ag pipe to ½ inch drip irrigation line". After replacing the pump Elan Christian said he would go over to the LAA and quote: "open things up".

Shortly after it was noticed that there were pools of effluent on the ground in between the 2 Wisconsin Mounds and at the northern end of the western mound. I then rang JJ Bruce the Sewerage Engineer who designed the system that Council approved for installation and asked what was going on. He told me straight that he was not going to be held responsible for Council Officer Gavin Spring going off on a frolic of his own, altering the design and instructing the installation plumber to basically down size the entire system.

On top of this it was discovered that the previous park owner had installed 4 septic tanks in the park himself which were substandard in every imaginable way and that Gavin Spring had retrospectively approved all of them.

The previous park owner had also placed 3 residents on Residential Site Agreements over the parks western boundary which was only discovered after a Council inspection in August 2006. Under threat of Legal Action from the adjacent property owner LLCP Pty Ltd attempted to terminate these Site Agreements under Section 95C of the Parks Act however

the Tribunal Member refused. The adjacent property owner then took the matter to the Supreme Court under the 1922 Encroachment of Building Regulation and the site agreements were then terminated.

Due to this there was widespread hatred, animosity and physical violence directed to the park owner and members of the family by residents, their relatives and friends who blamed the current owner for what in effect was the action of the previous owner and Council. There was also frequent serious vandalism of park infrastructure and equipment as well as harassment and intimidation of tourists by long term residents in a calculated and successful attempt at damaging the financial viability of the business.

After many letters and denials by Council, repeated Penalty Infringement Notices and upgrade demands issued to LLCP Pty Ltd by Gavin Spring, Lee Rothwell from Think Water Alstonville came to the park. He took one look at the OSSMS, asked to see the Engineer's Report and just shook his head, the whole truth was plain to see.

The reed bed itself was supposed to be 750 square metres, it was in fact only 615 square metres, it was supposed to be 700mm depth as that is the optimum depth for a reed bed to work, it was in fact 1.3m deep. The list just went on and on and on.

The upgrade required in 2005-2010 to fix Gavin Springs frolic which led directly to the failure of the system, including replacement of pumps, valves, pipes, earthworks, labour etc was in excess of \$150,000.

A case was commenced in 2010 in the District Court by McInnes Legal on a pro bono basis as the business was under financial pressure from the constant demands of Council.

Council's Insurer and McInnes Legal agreed to an out of Court settlement in August 2012 of \$357,000 inclusive of costs.

As the Solicitor said, the case was worth a lot more however if it went to a full hearing it could take weeks in the District Court and chew up a lot of money in legal fees. As the Solicitor Andrew McInnes had been acting pro bono and was only a small business person as myself I did not wish to place him at financial risk of going to a full hearing and agreed to the settlement amount. The Council on the other hand had unlimited resources at its disposal.

The costs in the matter were quite significant.

Remedial work to the OSSMS, legal fees, engineering reports, professional witnesses, interest and bank charges on the required loans were in excess of \$300,000.

LLCP Pty Ltd then obtained a new loan facility from the ANZ Bank sufficient to fund the OSSMS upgrade Council had demanded with estimated costs of \$415,000 with the Flygt sewerage pump stations.

After this loan was approved and the funds provided LLCP Pty Ltd was getting close to disbursement of funds for purchase of the necessary materials to complete the project when just 7 weeks after settlement funds were received from Council's Insurer, Council Licensing Officer Vince Hunt served the new Conditional Operating License on the Park dated 12 October 2012.

It was quickly discovered that the additional demands made by Council in the Conditional License meant the end of the business as it was no longer financially viable. Letters were written to Mr Hunt requesting he rescind a number of the most expensive requirements however he wrote back stating quote: "These requirements are NSW Government mandated and legislated and cannot and will not be rescinded". Another letter was sent asking to stage the OSSMS upgrade over 7 years as it could be afforded, this request was also refused.

The loan funds were then handed back to the Bank and the loan cancelled. The refurbishment of the camp amenities block then underway was completed and was the last upgrade work of any kind to be undertaken in the park prior to closure.

After Mr Hunt's refusal to reconsider his demands a Government Information Protocol Application (GIPA) was submitted to Council to obtain copies of the operating licenses for the nearby parks also on bore water and licensed for long and short term sites to see if they had similar conditions imposed on them. No other park has had the same conditions placed on them as the Seabreeze and as such a fair and impartial person could perhaps suspect that the conditional license was imposed on LLCP Pty Ltd by Council out of spite for the Court matter settled only 7 weeks prior.

Due to what has occurred to date, LLCP Pty Ltd has lost all faith and trust in Ballina Council and is no longer prepared to go into debt or to invest any further in the business under any circumstances.

A Barrister's Opinion was sought from Martin Hadley of Windeyer Chambers at Martin Place in Sydney. This opinion stated that the Council could not be sued for issuing the new license without inspection as the Council is protected by NSW Government Legislation nicknamed the flood gate Legislation.

During litigation with Council a subpoenaed memo was found from Regulatory Services Chief Rod Willis in 2006 ordering all Council staff to send all correspondence for the Seabreeze Caravan Park to Samantha Kelly at DLA Piper (Council's Insurers Legal Team) for vetting prior to sending to the park. This clearly demonstrated express knowledge of the situation and wrongdoing by Senior Council Staff very early on. Instead of attempting to assist and work with the business once they discovered what had occurred, Council protected itself and hid everything from the park owner.

Also found in subpoenaed documents was that Vince Hunt had issued the new 5 Year Operating License on 27 April 2005 without an inspection taking place when he was fully aware the park sale hinged on this inspection. This at the very minimum must be gross incompetence or at worst corrupt conduct.

Additional damning evidence of Senior Council Staff conduct has been obtained through various sources however Legal Advice obtained is that this evidence be withheld at this stage in case of any further Court matters arising between LLCPP Pty Ltd and Ballina Shire Council.

The Direction to take Preventative Action Notice dated 4 June 2012 requiring yet another Sewerage Engineers Report only sort the upgrade of the current collection system by replacement of septic tanks and pump stations (most of which were only installed in 2005), upgrade of pipe work etc.

It was not until after the Simmonds and Bristow Report was completed did Council Licensing Officer Vince Hunt then demand that sewer be connected to the long term sites and sullage be connected to short terms sites.

Mr Hunt continued moving the goal posts and dramatically increased the costs yet again when he refused to heed advice from the NSW Far North Coast Area Fire Chief Bob Wilcox who after inspecting the park said the Fire Brigade would be satisfied with a standpipe on each site that had a dwelling on it. Mr Hunt then stated in a letter that he had contacted the Fire Chief only out of courtesy and it was up to Council to decide what was required for fire fighting, which was code for requiring far more costly upgrades.

An Options paper was sent to Ballina Council outlining various different ways to reduce the financial burden on the park owner in order to keep trading varying from nil social impact to complete closure.

Ballina Council did not respond.

Whilst this submission was being prepared a new Program of Works was received on Thursday 3 September 2015 from Council Licensing Officer Vince Hunt.