

**Submission
No 75**

INQUIRY INTO LOCAL GOVERNMENT IN NEW SOUTH WALES

Organisation: Gosford City Council

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The Director
General Purpose Standing Committee No. 6
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Sir

Inquiry into Local Government in New South Wales

Please find attached Gosford City Council's submission on the Inquiry into Local Government in New South Wales.

Should you wish to discuss any of the above information please contact

Yours faithfully

Paul Anderson
Chief Executive Officer

Each section of this submission provides the issues, evidence and recommendation in response to the relevant elements of the Inquiry's Terms of Reference.

1.1 NEW SOUTH WALES GOVERNMENT'S 'FIT FOR THE FUTURE' REFORM AGENDA

1.1.1 KEY ISSUES

FOCUS ON BOUNDARIES

The Independent Local Government Review Panel's (ILGRP) "Revitalising Local Government" report¹ published in October 2013 highlighted the need for a systems approach to improving and strengthening local government, aimed at ensuring long term sustainability. It contained a number of wide ranging recommendations to improve fiscal responsibility, strengthen councils' revenue base, meet community infrastructure needs, improve productivity and accountability, and enhance political leadership and good governance.

The State Government's response to this was the Fit for the Future reform agenda, which has focused solely on the ILGRP's recommendations of structural adjustment and boundary change.

REGIONAL VERSUS LOCAL PERSPECTIVES

It is also clear that structural reform and boundary change require a regional approach, but the whole Fit for the Future process pushed the onus on each individual council to respond to the requirements. Inevitably, councils have put their communities at the forefront of their proposal considerations, which has not progressed the regional perspective required by the State Government.

1.1.2 EVIDENCE

Of the ILGRP recommendations not related directly to structural and boundary adjustment, the NSW State Government taken the following positions:

- 1) NSW Office of Local Government (OLG) has been silent on ILGRP recommendations to:
 - a) Establishing an integrated Fiscal Responsibility Program with OLG, TCorp, IPART and LGNSW
 - b) Introducing more rigorous guidelines for the Delivery Program. OLG seems to have completely halted work on a standardised KPI Framework for Local Government. Gosford Council would be interested in contributing to this work, if it were to recommence.
 - c) Placing local government under the aegis of the Auditor General
 - d) Further review of rating system to remove or reduce exemptions or concessions and have more equitable ratings for multi-unit dwellings
 - e) Replacing or removing constraints to sound financial management from the current rate-pegging system
 - f) Reviewing the distribution of Financial Assistance Grants (FAGs)
 - g) Pooling a proportion of the roads component of the FAGs for strategic road and bridges projects
 - h) Undertaking whole-of-government review of the regulatory, compliance, and reporting burden on councils
 - i) Amending IPR guidelines to require councils to incorporate service reviews in the Delivery Programs
 - j) Strengthening requirements for internal performance auditing
 - k) Requiring councils to undertake regular Representation Reviews
 - l) Amending the legislated roles of councillors and mayors and introducing mandatory professional training
 - m) Developing a good governance guide
- 2) The NSW State Government has decided not to:

¹ Sansom, Munro & Inglis (2013), *Revitalising Local Government, Final Report of the NSW Local Government Review Panel*, 25 October 2013

- a) Extending the Local Infrastructure Renewal Scheme (LIRS) for 5 years. There are some commitments of funding for local infrastructure in the Fit for the Future reform but these seems to be tied to council showing that they are 'Fit for the Future'
 - b) Adopting a similar model to Queensland's of Regional Roads and Transport groups
- 3) OLG has also advised that access to a state-wide borrowing facility (through NSW Treasury) will be limited to those councils that are 'Fit for the Future'

Gosford City Council is not making a comment as to the merit or otherwise of the above recommendations. Not all of these recommendations can and should be implemented. But some would have a positive impact on councils ability to be financial sustainable, efficient and meet their community expectations.

This does speak to OLG's focus only on amalgamations and structural reform, when there were many other recommendations in the ILGRPs report left undressed. Some of which OLG have made no statement on even to clarify why they are not proceeding with them.

1.1.3 RECOMMENDATION

The NSW State Government respond to all the recommendations in the ILGRP report, looking beyond structural and boundary change to reform the sector.

The State Government need to take a more direct role in leading regional discussions on structural reform to balance the regional and local perspectives.

1.2 THE FINANCIAL SUSTAINABILITY OF THE LOCAL GOVERNMENT SECTOR IN NEW SOUTH WALES, INCLUDING THE MEASURES USED TO BENCHMARK LOCAL GOVERNMENT AS AGAINST THE MEASURES USED TO BENCHMARK STATE AND FEDERAL GOVERNMENT IN AUSTRALIA

1.2.1 KEY ISSUES

It is certainly accepted that financial sustainability is import to ensuring good governance, management and service delivery for councils. But financial metrics are only one aspect for councils to benchmark their performance. The Fit for the Future reform program has focused on financial metrics to the detriment of other important aspects of effective local governance, including councils' obligations to its:

- Community
- Workforce
- Local businesses and economy

1.2.2 EVIDENCE

The Fit for the Future reform benchmarks do not include any aspect of assessing Council performance in relation to meeting community expectations or workforce productivity.

In addition, the requirement to consult with community was for an improvement proposal was only confirmed when IPART published the final methodology in early June 2015. Instead of extending the time frame, the methodology directed councils who may not have time to adequately consult with their communities to put their proposal forward anyway. Effectively this required councils to submit a proposal without consulting their community.

Both the IPGRP report and the Fit for the Future reform agenda are silent on industrial opportunities and impacts of reform. Councils' workforces are central to delivering effective and efficient services to the communities they serve. In many rural and regional areas, councils are significant employers and play a significant role in the economic development of their communities.

1.2.3 RECOMMENDATIONS

Local Government Reform should consider a balanced scorecard of benefits and benchmarks to assess the performance of councils.

1.3 THE PERFORMANCE CRITERIA AND ASSOCIATED BENCHMARK VALUES USED TO ASSESS LOCAL AUTHORITIES IN NEW SOUTH WALES

1.3.1 KEY ISSUES

Infrastructure benchmarks are based on an unaudited section of the Councils' reporting making benchmarks and comparisons between councils irrelevant and impossible.

The requirement to exclude Water and Sewerage Authorities from the performance assessment means does not reflect the reality for some councils.

1.3.2 EVIDENCE

Infrastructure backlog and asset maintenance ratios are based on data from Special Schedule 7 in Councils financial statements. Until the 2014/15 financial year, there is no requirement for Councils to have this schedule audited. Even in 2014/15, auditors will only be able to confirm that the methodology to develop Special Schedule 7 is adequate, but this will not produce sufficiently comparable data to be held against an industry standard benchmark.

As a result, these benchmarks are meaningless.

Gosford operates a Water and Sewerage Authority integrated into its business. Effectively water and sewerage is one of a number of infrastructure services it delivers to its community. These services' prices are regulated by IPART, as are Council's drainage infrastructure services. It is not clear why Water and Sewerage were excluded from the benchmarks. It does not reflect the reality of the services this council delivers to its community.

1.3.3 RECOMMENDATION

NSW Government consider a range of infrastructure indicators for councils select the most appropriate for their circumstances and show improved performance against over time.

NSW Government include at all the services provided by councils in review, even though this may require a range of indicators and benchmarks and not enable direct comparisons.

1.4 THE SCALE OF LOCAL COUNCILS IN NEW SOUTH WALES

1.4.1 KEY ISSUES

Scale and Capacity as the threshold criteria was the most problematic of the performance criteria in the Fit for the Future reform.

There were limited definitions of what these elements entailed and the benchmark was broad comparability with the ILGRP recommendations. In many cases, it wasn't clear why the ILGRP recommendations were deemed to have better strategic capacity and scale than any other structural option.

The argument at amalgamations produce economies of scale is economically false.

Scale was never based on population.

1.4.2 EVIDENCE

The only definition of capacity can from Box 8 on page 32 of the Revitalising Local Government report. This was a list of Key Elements of Strategic Capacity, including:

1. More robust revenue base and increased discretionary spend
2. Scope to undertake new functions and major projects
3. Ability to employ a wider range of skilled staff
4. Knowledge, creativity and innovation
5. Advanced skills in strategic planning and policy development
6. Effective regional collaboration
7. Credibility for more effective advocacy
8. Capable partner for State and federal agencies
9. Resources to cope with complex and unexpected change
10. High quality political and managerial leadership

Despite this issue being raised in numerous submissions from different councils and stakeholders throughout the Fit for the Future process, there was never any more clarity than the above list and the direction that councils' proposal need to be broadly consistent with the levels of strategic capacity in the ILGRP recommendations.

What constitutes a council having knowledge, creativity and innovation? What is effective regional collaboration? What is a capable partner for State and federal agencies? Where is the evidence that the ILGRP recommendations meet all the 10 elements of strategic capacity?

1.4.3 CASE STUDIES

The final IPART methodology confirmed that population was the indicator of optimal scale for a council. However, population was not consistently applied across even within regional groupings.

For example, population as an indicator of the preferred scale in our region, the Hunter and Central Coast, is difficult to ascertain. The preferred options from the ILGRP recommendations provide no consistent expectation of a target population size, as the table below indicates.

Councils	Preferred Option	Population 2011 ²	Population 2031 ³
Dungog / Maitland	Amalgamate	78,450	109,300
Newcastle / Lake Macquarie	Amalgamate	352,350	407,900
Cessnock	Stand-alone (in JO)	52,500	66,400
Muswellbrook	Stand-alone (in JO)	16,350	19,350
Port Stephens	Stand-alone (in JO)	67,200	88,900
Singleton	Stand-alone (in JO)	23,500	27,350
Upper Hunter	Stand-alone (in JO)	14,509	16,500
Gosford	Amalgamate or Stand-alone in JO	168,300	189,050
Wyong	Amalgamate or Stand-alone in JO	154,350	197,850

Why recommend to amalgamate the two highest populated councils to increase their 'scale', but leave the lowest populated councils to stand-alone?

² NSW Department of Planning & Environment (2014) "NSW State and Local Government Area Population Projections – 2014 Final", <http://www.planning.nsw.gov.au/en-us/deliveringhomes/populationandhouseholdprojections/data.aspx>

³ ibid

1.4.4 RECOMMENDATION

If scale and capacity is central to effective local government, then a more consistent and evidence-based approach to defining and assessing scale and capacity is required.

1.5 THE ROLE OF THE INDEPENDENT PRICING AND REGULATORY TRIBUNAL (IPART) IN REVIEWING THE FUTURE OF LOCAL GOVERNMENT IN NEW SOUTH WALES, ASSISTED BY A SOUTH AUSTRALIAN COMMERCIAL CONSULTANT

1.5.1 KEY ISSUES

Gosford City Council has raised a question with IPART its role in this process in relation to the requirements in the IPART Act in our submission to their methodology consultation paper.

1.5.2 EVIDENCE

Please refer to the correspondence attached, which includes:

- Gosford Council's submission to the IPART Fit for the Future methodology consultation paper
- IPART's response

We refer to the letter from IPART to the Council dated 29 May 2015.

IPART state in its letter that the matters in section 15(1) of the *Independent Pricing and Regulatory Tribunal Act 1992 (NSW) (IPART Act)* do not apply to a review under section 9 of the IPART Act. IPART take this position because:

Section 9 Reviews, such as the Fit for the Future review, do not involve IPART making determinations or recommendations under the IPART Act...Even where those services include providing advice in the form of recommendations, such recommendations are not recommendations made under the IPART Act.

IPART's position is that a recommendation made by it under section 9 is not a recommendation made under the IPART Act, which in our view is incorrect for the reasons outlined below.

The section 9 arrangement with IPART

The Premier has requested that, pursuant to section 9 of the IPART Act, the IPART fulfil the role as Expert Advisory Panel to review the Fit for the Future proposals in accordance with the Terms of Reference. The Terms of Reference specifically ask IPART to make a recommendation on whether each council is Fit for the Future. Under the heading 'Task', the Terms of Reference state (emphasis added):

The Expert Advisory Panel (the Panel) will assess the Fit for the Future proposals of NSW councils, and prepare a report to the Minister for Local Government ***with a recommendation*** on whether each council is Fit for the Future.

A recommendation made under section 9 is a recommendation under the IPART Act

Section 9 of the IPART Act is in Part 2 of the IPART Act. Part 2 of the IPART Act provides for the establishment of IPART. Notably:

1. Section 7 of the IPART Act requires that IPART is not subject to the control or direction of the Minister in making determinations or recommendations, or in respect of any function conferred or imposed on the Tribunal by or under any Act.
2. Section 9 of the IPART Act prescribes two preconditions to IPART entering into an arrangement to provide services to the Government:

- first, it must be within IPART's field of expertise; and
- second, it must be relevant to IPART's functions.

That is, the type of arrangements that IPART can enter are limited to arrangements that are consistent with the purpose for which IPART was created and limited to arrangements that are relevant to IPART's functions.

In respect of Part 2 of the Act, section 9 itself does not refer to the making of recommendations, but section 7 provides that recommendations are not subject to the control or direction of the Minister. The combined effect of the 'Task' allocated in the Terms of Reference and Part 2 of the IPART Act is that IPART has been asked to make a recommendation, which is not subject to the control or direction of the Minister, and that recommendation is a recommendation made pursuant to the provision of services under section 9 of the IPART Act. Any recommendation made by IPART pursuant to the provision of services under section 9 of the IPART Act is a recommendation under the IPART Act. If it were not so, IPART would have no statutory power to make the recommendation.

Section 15 applies to recommendations made under the Act, and is not limited to Part 3

Section 15 of the IPART Act is in Part 3 of the IPART Act. Part 3 of the IPART Act generally provides for IPART to make price determinations and to conduct inquiries, in particular in respect of electricity, monopoly services and access regimes. Whilst section 15 appears in Part 3 of the IPART Act, the plain language of section 15 is that it applies in the *'making of determinations and recommendations under the Act'*.

If it was intended that section 15 be limited to Part 3, it would have said: *'In making determinations and recommendations under Part 3 [or 'this Part']...'*. Similarly, if it was intended that section 15 be limited in application to a number of specified parts of the IPART Act, it would have stated the parts to which it applied.

Further, if it was intended that section 15 not apply to a recommendation made by IPART pursuant to an arrangement under Part 2, section 15 should have included an exclusion similar to the two exclusions in sections 15(3) and 15(4) which provide that section 15 does not apply to the Tribunal in the exercise of any of its functions under sections 12A and 11(3) respectively. That is, section 15 could have contained a subsection that stated: *'This section does not apply to the Tribunal in the exercise of any functions under section 9.'*

It does not matter that some matters in section 15 are not relevant

IPART state that many of the matters listed in section 15(1) of the IPART Act are relevant only to pricing issues and are not relevant to a large number of section 9 reviews. However, section 15(2) states that any report of a determination or recommendation made by IPART under the Act must indicate what regard it has had to the matters set out in section 15(1) in reaching its recommendation. If a particular matter is not relevant, IPART should simply note in its report that it has given little weight to the matter because it is not relevant. It is likely that each of the matters in section 15(1) will be given different weight depending on what function the IPART exercises. Whether or not a particular matter listed in section 15 is relevant to a recommendation does not inform whether or not section 15 applies in the circumstances.

Conclusion

Whilst we can understand why IPART are attempting to draw a distinction between recommendations made under section 9 and recommendations made under other parts of the IPART Act, IPART's reasoning has not established any contextual or implied limitation to the plain meaning of the words in section 15.

The words used in section 15 can only mean that section 15 applies to IPART in making recommendations under any part of the Act, and is not limited to a specific part or section of the IPART Act. A recommendation made pursuant to the provision of services under section 9 is still a recommendation under the IPART Act. If it were not so, IPART would have no power to provide the services.

Accordingly, we do not agree with IPART that section 15(1) does not apply to recommendations it makes on the Council's Fit for the Future Reforms.