



Independent Pricing and Regulatory Tribunal

Gosford City Council and Wyong Shire Council

Developer Charges

Water — Determination
May 2013



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Determination No. 1, 2013

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The Tribunal members for this review are:

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Mr James Cox PSM, Chief Executive Officer and Full Time Member

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Preliminary

1 Background

- (a) Section 11 of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) (**IPART Act**) gives the Independent Pricing and Regulatory Tribunal (**IPART**) a standing reference to conduct investigations and make reports to the Minister on the determination of the pricing for a government monopoly service supplied by a government agency specified in schedule 1 of the IPART Act.
- (b) A 'water supply authority' within the meaning of the *Water Management Act 2000* (NSW) is specified as a government agency in schedule 1 of the IPART Act. The Gosford City Council and Wyong Shire Council (together, the **Councils**) are each a 'water supply authority' under the *Water Management Act 2000* (NSW).
- (c) The services which, if supplied by the Councils, are declared to be government monopoly services under the *Independent Pricing and Regulatory Tribunal (Water, Sewerage and Drainage Services) Order 1997* (**Order**) relevantly include services supplied in connection with the provision or upgrading of water supply and sewerage facilities for new developments and, if required, drainage facilities for such developments.
- (d) On 21 September 2000, IPART released Determination No. 9, 2000 (**2000 Determination**) under section 11 of the IPART Act.
- (e) Under the 2000 Determination, IPART set a methodology for fixing the maximum price that the Councils, among others, could charge for providing the services referred to in clause 1(c) above to Developers. In particular, IPART:
 - (1) required the Councils to calculate Developer Charges using a Net Present Value model set out in schedule 4 of the 2000 Determination (**Net Present Value Model**);
 - (2) specified in schedule 5 of the 2000 Determination the parameters for the Net Present Value Model; and
 - (3) required the Councils to:
 - (A) review their existing Development Servicing Plans by 30 June 2001, and thereafter to review their Development Servicing Plans and Developer Charges once, and no more than once, in each five year period from 1 July 2001;
 - (B) review their Developer Charges when and to the extent required by a determination of IPART; and
 - (C) adjust their Developer Charges for CPI in years in which they did not review their Developer Charges.

- (f) Under section 13(6) of the IPART Act, an investigation and report by IPART with respect to a government monopoly service may be limited to a particular part or category of that service, to a particular period during which that service is supplied, or in any other manner.
- (g) IPART has limited its investigation to determining:
 - (1) the date and frequency of review of the Councils' Development Servicing Plans and Developer Charges;
 - (2) the formula which the Councils must apply to adjust their Developer Charges for CPI in years in which they do not review their Developer Charges; and
 - (3) the parameters that the Councils must use for the Net Present Value Model.
- (h) In making this determination, IPART has had regard to a broad range of matters, including the matters in section 15(1) of the IPART Act.

2 Application of this determination

- (a) This determination commences on the later of:
 - (1) 1 July 2013; and
 - (2) the date that it is published in the NSW Government Gazette, (**Commencement Date**).
- (b) Under section 18(2) of the IPART Act, the Councils may not fix a price below that set out in, or calculated in accordance with, the 2000 Determination (as revised by this determination) without the Treasurer's approval.

3 Replacement of 2000 Determination

- (a) This determination replaces only the following parts of the 2000 Determination:
 - (1) the date by which, and the frequency with which, the Councils must review their Development Servicing Plans and Developer Charges with effect from the Commencement Date;
 - (2) the formula which the Councils must apply to adjust their Developer Charges for CPI in years in which they do not review their Developer Charges; and
 - (3) the parameters that the Councils must use for the Net Present Value Model in reviewing their Development Servicing Plans and Developer Charges as required under this determination.

- (b) Subject to clause 3(a) above, this determination does not affect or alter the operation of the 2000 Determination, nor does it affect anything done or omitted to be done, or rights or obligations accrued under the 2000 Determination before the Commencement Date.

4 Monitoring

IPART may monitor a Council's performance for the purposes of:

- (a) establishing and reporting on the level of the Council's compliance with this determination and the 2000 Determination; and
- (b) preparing a periodic review of pricing policies in respect of the government monopoly services supplied by the Council.

5 Schedules

- (a) Schedule 1 sets out:
 - (1) the revised date by which, and the revised frequency with which, the Councils must review their Development Servicing Plans and Developer Charges; and
 - (2) the revised formula which the Councils must apply to adjust their Developer Charges for CPI following years in which they do not review their Developer Charges.
- (b) Schedule 2 sets out the revised parameters that the Councils must use for the Net Present Value Model in reviewing their Development Servicing Plans and Developer Charges as required under this determination.

6 Definitions and interpretation

Schedule 3 sets out the definitions and interpretation provisions used in this determination.

Schedule 1 Revised date and frequency of review

1 Application

- (a) This schedule sets out:
 - (1) the revised date by which, and the revised frequency with which, each Council must review its Development Servicing Plans and Developer Charges; and
 - (2) the revised formula which each Council must apply to adjust its Developer Charges for CPI in years in which it does not review its Developer Charges.
- (b) The revised date by which, and the revised frequency with which, each Council must review its Development Servicing Plans and Developer Charges and the formula for adjusting Developer Charges for CPI set out in this schedule replace the date and frequency of review and formula for adjusting Developer Charges for CPI specified in clauses 3.1, 3.2 and 3.3 of the 2000 Determination.

2 Revised date and frequency of review

- (a) Each Council must:
 - (1) commence a review (**Initial Review**) of all of its existing Development Servicing Plans from the Commencement Date;
 - (2) conclude the Initial Review and adopt revised Development Servicing Plans by 1 July 2014;
 - (3) ensure that the Council's Revised Developer Charges following the Initial Review start to apply by no later than 1 July 2014; and
 - (4) following the Initial Review, review its Development Servicing Plans and Developer Charges:
 - (A) once, and no more than once, in each 5 year period, with the first 5 year period starting on 1 July 2014; and
 - (B) when and to the extent required by a determination of IPART.
- (b) A Council's existing Development Servicing Plan, if registered with IPART before the Commencement Date, will continue to apply to all new Developments or stages of Development until the Council adopts a revised Development Servicing Plan.

- (c) If there is no review of Developer Charges under clause 2(a) above in any given year (**Year n**), the Developer Charges then prevailing must be multiplied to take effect from 1 July in each such year by the number derived from the application of the following formula:

$$\frac{CPI_{March\ year\ n}}{CPI_{March\ year\ n-1}}$$

Where:

CPI = the consumer price index, All Groups index number for the weighted average of eight capital cities as published by the Australian Bureau of Statistics, or if the Australian Bureau of Statistics does not or ceases to publish the index, then *CPI* will mean an index determined by IPART;

March year n = the March quarter for Year n; and

March year n-1 = the March quarter for the year before Year n.

- (d) The Councils must use the parameters set out in schedule 2 of this determination in reviewing Development Servicing Plans and Developer Charges under clause 2(a) above.

Schedule 2 Revised parameters

1 Application

- (a) This schedule sets out the parameters that the Councils must use for the Net Present Value Model in any review of Development Servicing Plans or Developer Charges undertaken pursuant to clause 2(a) of schedule 1.
- (b) Subject to clause 2(b) of schedule 1, the parameters sets out in this schedule replace the parameters specified for each Council in clauses 3 and 4 in schedule 5 of the 2000 Determination.

2 Revised parameters

- (a) The parameters that Gosford City Council must use for the Net Present Value Model are:
 - (1) A 0% real Discount Rate for Pre 1996 Assets (r_1);
 - (2) A real Discount Rate for Post 1996 Assets (r_2) equal to Gosford City Council's Pre-tax WACC;
 - (3) A real Discount Rate for the expected net revenues and costs (r_3) equal to Gosford City Council's Pre-tax WACC;
 - (4) Consumption per annum for an average residential customer equal to Gosford City Council's Customer Consumption; and
 - (5) A forecast horizon for expected net revenues and costs of 30 years (n).
- (b) The parameters that Wyong Shire Council must use for the Net Present Value Model are:¹
 - (1) A 0% real Discount Rate for Pre 1996 Assets (r_1);
 - (2) A real Discount Rate for Post 1996 Assets (r_2) equal to Wyong Shire Council's Pre-tax WACC;
 - (3) A real Discount Rate for the expected net revenues and costs (r_3) equal to Wyong Shire Council's Pre-tax WACC;
 - (4) Consumption per annum for an average residential customer equal to Wyong Shire Council's Customer Consumption; and
 - (5) A forecast horizon for expected net revenues and costs of 30 years (n).

¹ Clause 4(f) in schedule 5 of the 2000 Determination specified an 85% cap for Wyong Shire Council's Developer Charges. That cap no longer applies to the Council.

Schedule 3 Definitions and Interpretations

1 Definitions

1.1 General definitions

In this determination:

2000 Determination has the meaning given to that term in clause 1(d) of the *Preliminary* section of this determination.

Commencement Date, for this determination, has the meaning given to that term in clause 2(a) of the *Preliminary* section of this determination.

Councils means Gosford City Council and Wyong Shire Council, and **Council** means either of them.

Customer Consumption in relation to a Council means the consumption of water per annum for an average residential customer referred to in the Council's Periodic Charges Review prevailing on the day that the Council's Revised Developer Charges start to apply.

Initial Review has the meaning given to that term in clause 2(a)(1) of the schedule 1 of this determination.

IPART has the meaning given to that term in clause 1(a) of the *Preliminary* section of this determination.

IPART Act has the meaning given to that term in clause 1(a) of the *Preliminary* section of this determination.

Net Present Value Model has the meaning given to that term in clause 1(e)(1) of the *Preliminary* section of this determination.

Order has the meaning given to that term in clause 1(c) of the *Preliminary* section of this determination.

Periodic Charges Review in relation to a Council means IPART's investigation and report to the Minister under the IPART Act on the determination of the pricing for services supplied by the Council which are declared to be government monopoly services under the Order, other than services supplied in connection with the provision or upgrading of water supply and sewerage facilities for new developments and, if required, drainage facilities for such developments.

Pre-tax WACC in relation to a Council means the pre-tax weighted average cost of capital referred to in the Council's Periodic Charges Review prevailing on the day that the Council's Revised Developer Charges start to apply.

Revised Developer Charges means the Developer Charges calculated by a Council following the Council's review of those Charges, including a review conducted as a part of a review of a Development Servicing Plan.

1.2 Terms defined in 2000 Determination

Unless defined in this determination, terms defined in the 2000 Determination have the same meaning in this determination as they have in the 2000 Determination.

2 Interpretation

2.1 General provisions

In this determination:

- (a) headings are for convenience only and do not affect the interpretation of this determination;
- (b) a reference to a schedule, annexure, clause or table is a reference to a schedule or annexure to, clause of, or table in, this determination unless otherwise indicated;
- (c) words importing the singular include the plural and vice versa;
- (d) a reference to a law or statute includes regulations, rules, codes and other instruments under it and consolidations, amendments, re-enactments or replacements of them;
- (e) where a word is defined, other grammatical forms of that word have a corresponding meaning;
- (f) a reference to a day is to a calendar day;
- (g) a reference to a person:
 - (1) includes any company, partnership, joint venture, association, corporation, other body corporate or government agency; and
 - (2) includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation), replacements and assigns;

- (h) a reference to a body, whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions; and
- (i) if the value of any of the parameters specified in schedule 2 does not exist or cannot be calculated for any reason, the value will be that determined by IPART.

2.2 Explanatory notes and clarification notice

- (a) Explanatory notes do not form part of this determination, but in the case of uncertainty may be relied on for interpretation purposes.
- (b) IPART may publish a clarification notice in the NSW Government Gazette to correct any manifest error in this determination. Such a clarification notice is taken to form part of this determination.

2.3 Prices exclusive of GST

Prices or charges specified in this determination do not include GST.

