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Dr Peter J Boxall
Independent Pricing and Regulatory Tribunal
PO Box K35
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Dear Mr Boxall

Methodology for Assessment of Council Fit for the Future Proposal

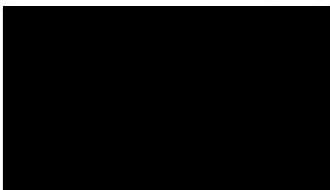
Please find attached Gosford City Council's submission to the Independent Pricing and Regulatory Tribunal (IPART) on the Methodology for Assessment of Council Fit for the Future (FFTF) Proposal.

As per the analysis attached, the draft Methodology released by IPART does not address all the matters that IPART must consider under section 15 of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) (**IPART Act**).

Given the attached analysis, the Council would appreciate understanding from IPART:

1. whether it will assess the FFTF proposals in accordance with the matters specified in section 15(1) of the IPART Act,
2. if so, whether IPART intends to amend its draft Methodology to refer to the matters specified in section 15(1) of the IPART Act, and
3. if the methodology is amended, whether it will allow councils sufficient time to respond to the matters identified in section 15 of the IPART Act.

Yours sincerely



Paul Anderson
Chief Executive Officer

Submission on the Methodology for Assessment of Council Fit for the Future (FFTF) Proposal

1. Summary

- 1.1 The draft Methodology released by IPART does not address all the matters that IPART must consider under section 15 of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) (**IPART Act**).
- 1.2 IPART should indicate whether it intends to amend the draft Methodology so that it is consistent with section 15 of IPART Act.
- 1.3 If the Methodology is reconsidered, the Government should also consider the date that the Fit for the Future (**FFTF**) Proposals are due, so that councils have sufficient time to address the matters that IPART is required to consider under the IPART Act.

2. IPART'S role as Expert Panel

- 2.1 The State Government has asked IPART to fulfil the role of the FFTF Expert Advisory Panel, and undertake a review of council FFTF Proposals and make recommendations to the Government in accordance with terms of reference set by the Government. In summary, the terms of reference require IPART to:
 - 2.1.1 develop a methodology for assessing proposals,
 - 2.1.2 undertake the assessments of whether each council is FFTF, consistent with the methodology, and
 - 2.1.3 provide the Government with a final assessment report by 16 October 2015 which includes recommendations to the Government.
- 2.2 In April 2015, IPART released draft Methodology and seeks written comments on the draft Methodology by 25 May 2015. In broad terms, the Methodology adopts the Government's 'scale and capacity' criterion as the threshold criterion for councils. The Methodology also adopts the Government's 'sustainability', 'effective infrastructure and service management' and 'efficiency' criterion.

3. Matters that IPART must consider in assessing the Fit for the Future Proposals submitted by Council.

- 3.1 IPART is a tribunal established by the IPART Act. It has the powers and functions vested in it under that Act. Those powers and functions are to be exercised in accordance with and for the purposes of the IPART Act. The draft Methodology does not identify the matters that IPART must consider under the IPART Act in assessing the FFTF Proposals.
- 3.2 Section 15 of the IPART Act sets out the matters that IPART must have regard to in making recommendations under the IPART Act, including in making recommendations on the FFTF proposals. A copy of section 15 is annexed as Annexure 'A'. Whilst, section 15 appears in Division 5 of Part 3 of the IPART Act and the subject matter of Division 5 is generally price determinations and electricity costs determinations by IPART, the plain language of section 15 is that it applies in 'making determinations and recommendations' under the Act. This is also clearly the case because sections 15(3) and (4) exclude the operation of section 15 from functions of IPART in sections 11(3) and 12A, both of which are in different divisions of Part 3. 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. Accordingly, a plain reading of section 15 is that it applies to recommendations made in the provision of services under section 9 so that in the making of those recommendations regard must be had to the matters prescribed by section 15.

3.3 The draft Methodology does not refer to section 15, nor does it refer to or list the matters specified in section 15(1).

3.4 The following table contains a review of the draft Methodology against the matters that IPART must consider in accordance with section 15(1):

Section 15(1) matter	Description	Identified in Methodology
(a)	The cost of providing the services concerned	Arguably yes, as part of the 'sustainability', 'Effective Infrastructure and service management' and 'efficiency' criterion.
(b)	The protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standard of services	No
(c)	The appropriate rate of return on public sector assets, including appropriate payment of dividends to the Government for the benefit of the people of New South Wales	No
(d)	The effect on general price inflation over the medium term	No
(e)	The need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers	Arguably yes as part of the 'efficiency' criterion.
(f)	The need to maintain ecologically sustainable development (within the meaning of section 6 of the <i>Protection of the Environment Administration Act 1991</i>) by appropriate pricing policies that take account of all the feasible options available to protect the environment	No
(g)	The impact on pricing policies of borrowing, capital and dividend requirements of the government agency concerned and, in particular, the impact of any need to renew or increase relevant assets	Not in terms, but arguably as part of the 'infrastructure and service management' criterion.
(h)	The impact on pricing policies of any arrangements that the government agency concerned has entered into for the exercise of its functions by some other person or body	No
(i)	The need to promote competition in the supply of the services concerned	No

Section 15(1) matter	Description	Identified in Methodology
(j)	Considerations of demand management (including levels of demand) and least cost planning	No
(k)	The social impact of the determinations and recommendations	No unless it is part of the 'other considerations' in Part 4 of the Methodology.
(l)	Standards of quality, reliability and safety of the services concerned (whether those standards are specified by legislation, agreement or otherwise).	No

4. What is the consequence of the Methodology not referring to the matters in section 15 of the IPART Act?

4.1 There are a number of consequences that arise as a result of IPART not addressing the section 15 matters in the Methodology:

4.1.1 It is likely that most councils will not address the matters in section 15 of the IPART Act as part of their FFTF proposals.

4.1.2 Even if IPART had included the matters in section 15 in the Methodology, there is a real concern about whether councils have sufficient time to address the section 15 matters in their FFTF proposals. The Methodology will be finalised on 1 June 2015, FFTF proposals are to be submitted by 30 June 2015, in circumstances where the FFTF templates have been available since October 2014 and councils have been preparing their FFTF proposals since before October 2014.

4.1.3 If councils do not address the section 15 matters in their FFTF proposals, IPART will not be provided with sufficient information to consider the matters in section 15(1).

4.1.4 If IPART is not provided with sufficient information to consider the section 15(1) matters, any recommendation of IPART after considering the FFTF proposals would not be a 'recommendation' made in accordance with the IPART Act and could be impugned as being beyond power.

5. Response from IPART

5.1 Given the above analysis, the Council would appreciate understanding from IPART:

5.1.1 whether it will assess the FFTF proposals in accordance with the matters specified in section 15(1) of the IPART Act,

5.1.2 if so, whether IPART intends to amend its draft Methodology to refer to the matters specified in section 15(1) of the IPART Act, and

5.1.3 if the methodology is amended, whether it will allow councils sufficient time to respond to the matters identified in section 15 of the IPART Act.

Annexure 'A' – Section 15 of the IPART Act

15 Matters to be considered by Tribunal under this Act

(1) In making determinations and recommendations under this Act, the Tribunal is to have regard to the following matters (in addition to any other matters the Tribunal considers relevant):

- (a) the cost of providing the services concerned,
- (b) the protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standard of services,
- (c) the appropriate rate of return on public sector assets, including appropriate payment of dividends to the Government for the benefit of the people of New South Wales,
- (d) the effect on general price inflation over the medium term,
- (e) the need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers,
- (f) the need to maintain ecologically sustainable development (within the meaning of section 6 of the *Protection of the Environment Administration Act 1991*) by appropriate pricing policies that take account of all the feasible options available to protect the environment,
- (g) the impact on pricing policies of borrowing, capital and dividend requirements of the government agency concerned and, in particular, the impact of any need to renew or increase relevant assets,
- (h) the impact on pricing policies of any arrangements that the government agency concerned has entered into for the exercise of its functions by some other person or body,
- (i) the need to promote competition in the supply of the services concerned,
- (j) considerations of demand management (including levels of demand) and least cost planning,
- (k) the social impact of the determinations and recommendations,
- (l) standards of quality, reliability and safety of the services concerned (whether those standards are specified by legislation, agreement or otherwise).

(2) In any report of a determination or recommendation made by the Tribunal under this Act, the Tribunal must indicate what regard it has had to the matters set out in subsection (1) in reaching that determination or recommendation.