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23 September 2009

Mr James Cox
Acting Chairman
Independent Pricing and Regulatory Tribunal
PO Box Q290
QUEEN VICTORIA BUILDING NSW 1230

Dear Mr Cox

**REVIEW OF REGULATORY FRAMEWOEK OF LOCAL GOVERNMENT - DRAFT
REPORT**

On 22 September 2009 Council resolved to forward the attached submission in response to the Independent Pricing and Regulatory Framework recommendation and report into the Review of Revenue Framework for Local Government.

May I take this opportunity to thank the Tribunal for the additional workshop held at Lake Macquarie City Council on 16 September 2009, and the extension of time granted to Hunter Councils for the lodgement of submissions.

Yours faithfully

Lindy Hyam
GENERAL MANAGER

Attachment A - Responses to the IPART draft Recommendations

1.6 RECOMMENDATIONS	COMMENTS
1.6.1 Improving financial management and asset management	
<p>1. Councils should disclose the Net Operating Result (surplus/deficit), excluding capital revenues, on the Income (Operating) Statement as the principal measure of operating result. Capital revenues to be excluded from the result include:</p> <ul style="list-style-type: none"> – proceeds from asset sales – developer contributions, and – capital grants. 	<p>Agreed. NCC when reporting its financial statements results to Council adjusts the operating results in the accompanying report to disclose a pre and post capital revenue outcome as a more meaningful reflection of operating performance.</p>
<p>2. Councils should:</p> <ul style="list-style-type: none"> – report maintenance costs relating to public works in their operating statements – report actual annual expenditure on renewal of capital works within Special Schedule No. 7 of the published financial statements – have asset management systems based on a common definition of asset condition. 	<p>The Accounting Standards and the Code of Accounting Practice and Financial Reporting determine the individual line item reporting of the operating statement. It may be more appropriate for the reporting of maintenance costs on public works and capital works renewal expenditure to be reported by way of note to the accounts.</p>
<p>3. The Department of Local Government and local councils should develop consistent definitions of asset condition. These definitions should be used in asset management planning, asset management systems and asset reporting by all Councils.</p>	<p>Council agrees that there should be more prescription and consistency in asset condition indices. The term satisfactory is somewhat subjective in referencing asset condition. The introduction of asset condition definitions would be welcomed to assist councils in meeting their obligations to asset management under the Integrated Planning and Reporting Framework.</p>
1.6.2 Improving the effectiveness of the provision of services	
<p>4. Each council should conduct a survey every two years to measure community satisfaction with delivery of key services. The result should be published in each council's Annual Report.</p>	<p>Council is supportive of and has been compliant with this recommended initiative for a number of years and in addition has consulted extensively through the annual Management Plan and Ward Forum process. NCC has recently established the "Newcastle Voice" – a 1500 membership of community and business representatives as the tool for conducting community and other key issue surveys within the LGA. Whilst the results could be published as part of the annual report Council considers that a dedicated space on its internet web site would reach a greater audience and achieve a better outcome.</p>
<p>5. The Department of Local Government and the LGSA should develop a survey of community satisfaction with the delivery of key services that is suitable to be used by all councils.</p>	<p>The development of a standardised survey and it's applicability to the industry as a whole is considered would be at too high a level and would not address the unique nature and variability of service delivery amongst different LGA's.</p>
1.6.3 A new framework for local government	
<p>6. The NSW Government should introduce a new framework for regulating local government rates that has:</p> <ul style="list-style-type: none"> – a four-year rate setting horizon, but includes, as a minimum, regulated annual rate increases – a closer relationship between rate setting and strategic planning – a more transparent and rigorous process for rate setting, and – two options for rate setting (Option A and Option B). 	<p>Council welcomes the introduction of new rate revenue frameworks which increase transparency and accountability to the ratepayers and the community. Both options address the longer term focus for revenue planning and rate setting and align with the four year delivery program of the Integrated Planning and Reporting Framework.</p>

<p>7. The NSW Government should adopt Option A as the new default arrangement for all councils, which:</p> <ul style="list-style-type: none"> - retains rate pegging and includes a more transparent, empirically-based cost index for setting the rate peg, and - introduces a multi-year rate setting arrangement. <p>8. Option B should operate in conjunction with Option A and provides eligible councils with greater autonomy over rate setting, but with greater accountability - rate setting must be consistent with a community mandate.</p>	<p>Whilst there is a rate pegging default consideration attached to Option A, Council believes that this should be a short term default option with the ultimate goal that all councils will satisfy the criteria and be eligible for the rate setting autonomy afforded by Option B. This option provides Council with greater flexibility however comes with higher standards of accountability. It is considered that it should be the goal of all LGA's to attain this level of autonomy and perhaps the government consider mandating a period of expectation for all councils compliance.</p>
<p>1.6.4 The local government cost index</p>	
<p>9. The regulated annual rate increase should be based on the annual movement in a local government cost index (LGCI) and a local government productivity factor.</p> <p>10. The LGCI should be developed and maintained and be published, along with the basis for its calculation, by IPART, as an independent body.</p> <p>11. IPART should calculate a local government productivity adjustment factor that can be used in conjunction with the LGCI to encourage efficiency of local government.</p> <p>12. The productivity adjustment factor should be estimated by IPART in 2009/10 for 2010/11 and then in the first year of every four year electoral cycle of local government.</p> <p>13. The Minister should retain discretion and flexibility to determine an increase in rates over or under the cost index as proposed by IPART after giving a statement of reasons.</p>	<p>Council welcomes a transparent local government cost index which is independently maintained and published as an interim sound basis in determining annual rate increases whilst ever rate capping continues. It is acknowledged that some LGA's will incur costs increases beyond the index estimates however the safety net still exists in seeking special variations to offset this anomaly under both rating options. The public availability of this index will be beneficial for councils to model their individual cost impacts for community analysis and /or support applications for rating variations. The calculation of the productivity adjustment factor must be equitable and justifiable to minimise any diminution in service standards at the expense of perceived efficiencies. Ministerial interference with an independent process will lead to lack of credibility.</p> <p>Council recommends that IPART give consideration to a community ability to pay index. The Local Government Cost Index should go down to the Local Government Area level and perhaps be based on ABS demographics. Council also request IPART provide comment on the monopolistic pricing of street lighting and any impact on councils requirement to pay payroll tax.</p>
<p>1.6.5 Providing a mechanism for recovering foregone rate increases</p>	
<p>14. A 'catch-up' mechanism should be introduced that allows councils that have not utilised the full increases permitted under regulated annual rate rises to apply to catch-up rate income foregone. Councils should be allowed to increase their rates to catch up the total increase in the index over the 4 year term.</p>	<p>Recommendation supported. Communities hard hit by natural disasters or other significant events could be afforded interim relief under this proposal.</p>
<p>1.6.6 The specifics of Option A - A multi-year revenue path</p>	
<p>15. Option A should replace the current system, of councils seeking year to year variations of the regulated rate increase, with a model that:</p> <ul style="list-style-type: none"> - encourages a medium term focus by incorporating a four year rate-setting horizon, and - is more closely linked to council's strategic planning. <p>16. Minimum eligibility criteria should be introduced for requests to the Minister for rate variations. These criteria should build on the requirements of the Government's Integrated Planning and Reporting Framework.</p>	<p>It is acknowledged that the autonomy afforded under Option B may take some councils time to meet the set criteria. Option A should be considered an interim measure only during this transition phase. The medium term revenue path aligned to the four year delivery program facilitates the strategic and financial planning alignment with the IP&R framework.</p>

<p>17. The rigour and transparency of the process for assessing a medium term rate path (combined annual rate increase and special variations) should be improved by establishing a set of criteria that will be used to assess applications, including:</p> <ul style="list-style-type: none"> – a demonstrated need for a special adjustment on the basis of: <ul style="list-style-type: none"> ➤ service requirements for the community including evidence of unmet demand and evidence of community support for the provision of services ➤ special or unique cost pressures faced by the council ➤ infrastructure backlogs and implications for amenity, safety and health of the community – financial sustainability – a demonstrated adequate use of other sources of funds – impact on ratepayers. 	<p>The medium term rating proposal together with the delivery program should form the basis of the community consultation process. It will afford councils the flexibility to respond to emerging community needs, address council specific cost pressures, tackle infrastructure issues and maintain financial sustainability.</p>
<p>18. The Minister should retain flexibility to approve, vary or reject a council's request for a special variation. Where a council's application is rejected, a statement of reasons should be provided.</p>	<p>Council supports Ministerial accountability and transparency in justifying decisions made in respect of special variation applications.</p>
<p>19. Where a council's request for a special variation is rejected, the council would be subject to the regulated annual rate increase for the year, but may apply again for a one-off variation in special circumstances in a subsequent year of the four year cycle. However, these would be regarded as exceptional and rare.</p>	<p>Clarification is sought as to the "exceptional and rare" circumstances that must prevail for a subsequent request following a denial of a special variation application.</p>
<p>1.6.7 The Specifics of Option B</p>	
<p>20. Councils that have achieved high standards of financial performance, planning and reporting, and have received a community mandate through consultation or a public vote can be granted full autonomy in rate setting over a four year electoral cycle.</p>	<p>It is considered that councils should not have to earn their autonomy but it is inherent and implied as the democratic right of the third tier of government. IPART's admission of the unlikely immediate eligibility of many councils being successful in applying for full autonomy tends to suggest that Option A will be the probable outcome for most LGA's in the short to medium term pending the bedding in of the IP&R framework.</p>
<p>21. The standards to be met by councils seeking greater rate setting autonomy under Option B, should include:</p> <ul style="list-style-type: none"> – financial performance and asset management criteria, as outlined in Recommendation 22 – planning and reporting requirements, as outlined in Recommendation 23 – a community mandate received through a public consultation or a voting process, as outlined in Recommendation 24. 	<p>Council has no objections with the financial and asset management performance indicators recommended by the report however, it is suggested that some weighting be given to asset and investment impairment writedowns and investment property decrements that are driven by external factors and can adversely impact on a council's operating result. These outcomes can be reversed in subsequent reporting cycles as economies recover.</p>
<p>22. The financial performance and asset management criteria should include:</p> <ul style="list-style-type: none"> – have a track record of having positive operating results over the economic cycle – have a reasonable liquidity ratio – have sustainable debt levels – comply with the Local Government Code of Accounting Practice and Financial Reporting and report on the KPIs shown in Table 16.2 – have a responsible funding policy – have a track record of asset management – have a comprehensive asset management plan. 	<p>Supported subject to some allowance for operating results being adversely impacted by external factors referenced above.</p>

<p>23. The planning and reporting requirements should include:</p> <ul style="list-style-type: none"> – compliance with the Government's Integrated Planning and Reporting Framework (that is, prepare a Community Strategic Plan and a four year Delivery Plan) and a fully costed list of major projects in consultation with the community – the development of detailed revenue needs over the four year cycle consistent with the above plans. 	<p>Recommended proposals are fundamental to and underpin the 10 year financial plan requirements of the IP&R framework.</p>
<p>24. The requirements for obtaining a community mandate would be satisfied through councils developing a community engagement strategy, including undertaking agreed public consultation or a vote, regarding proposed services, capital works and revenues.</p> <p>25. Councils that do not meet these standards would continue to be subject to the rate increases determined in accordance with Option A of the proposed rate framework.</p>	<p>Council supports and encourages community consultation and feedback for management plan and budgetary considerations. However, Council also notes and supports the IPART view that a formal voting process is a move away from representative democracy and is reflective of a direct democratic system which is inconsistent with councils role as the third tier of government in Australia. The community survey is considered to be the more practicable approach but the percentage guidelines suggested would seem to make it extremely difficult for councils to achieve the mandate required. Other utilities seeking pricing increases are not subjected to these types of weightings.</p>
<p>1.6.8 The Minister's role</p>	
<p>26. In relation to the rate cap, the Minister for Local Government's role should involve:</p> <ul style="list-style-type: none"> – considering IPART's advice on its productivity adjusted cost index – determining the increase in rate cap, and providing a statement of reasons for any increase over or under the increase in the productivity adjusted cost index – announcing the increase. <p>27. In relation to variations under Option A, the Minister for Local Government's role should involve approving, varying or rejecting, applications by councils for rate variations under Option A, whether for a multi-year or single year increase. The Minister's decision should be accompanied by a statement of reasons.</p> <p>28. In relation to variations under Option B, the Minister for Local Government's role should involve:</p> <ul style="list-style-type: none"> – approving, or rejecting with a statement of reasons, councils' satisfaction of eligibility criteria to move into Option B of the framework – approving, or rejecting (with a statement of reasons), councils' satisfaction of community engagement criteria to implement rate revenue plans under Option B of the framework. 	<p>The fact that the government will not alter its policy position on rate capping the introduction of an independent compiled local government productivity adjusted cost index is a more transparent and credible process than currently exists. Ministerial explanation for rate variation outcomes supports this process. The index should reflect true council costs, particularly those impacted by coastal locations.</p>

1.6.9 The Department's role	
<p>29. The Department of Local Government's role should involve:</p> <ul style="list-style-type: none"> - Monitoring council rate increases. - Advising the Minister on variation proposals under Option A. - Administering and monitoring revenue requirements proposed by councils in Option A and B. - Monitoring and advising the Minister on compliance with eligibility, performance and accountability criteria in Option A and B. 	Council has no issues with the role proposed for the Department of Local Government.
1.6.10 IPART's role	
<p>30. IPART's role should involve:</p> <ul style="list-style-type: none"> - Developing, maintaining and publishing the Local Government Cost Index which incorporates a productivity adjustment. - Recommending to the Minister the Local Government Cost Index to be used for the regulated annual rate increase. - Reviewing the criteria used to approve requirements for councils achieving autonomy under Option A and Option B. 	Council supports the role of IPART in maintaining and publishing the cost index to support the annual rate increase. Council also suggests that in determining the index and productivity components IPART should consult with industry peer groups such as the Local Government Association and Shires Association of NSW, Local Government Managers Association and industry special interest groups for a wider and more specialised network for information gathering.
1.6.11 Timing the implementation of the framework	
<p>31. The proposed methodology under Option A for the LGCI based regulated annual rate increase should come into effect for the financial year 2010/11.</p>	Council supports this initiative and timeframe.
<p>32. The proposed medium term (special variations) under Options A and B should come into affect following the conclusion of the 2011/12 financial year, prior to council elections.</p>	Council understands IPART's intent of staging implementation of proposals to align with IP&R readiness and the next local government elections to be held in 2012. It raises no objection to the proposal.
<p>33. IPART should commence a survey of councils' costs during 2009/10 to determine the weightings for the cost index model to apply from 2010/11.</p>	Council supports this initiative and timeframe.
<p>34. Councils with existing special variation applications or approvals may continue to implement these beyond the starting point for the new framework.</p>	Recommendation endorsed. Existing special variation approvals must remain valid until varied otherwise.
<p>35. For the years 2010/11 and 2011/12, the cost index methodology will be used to inform the rate capping process and will operate in conjunction with the current special variation system. Following the conclusion of the 2011/12 financial year, the current special variation system will be abolished and replaced by the medium term revenue path outlined under Options A and B of the proposed framework.</p>	Recommendation endorsed. The existing special variation process must continue to allow councils the opportunity to seek increases above the cap pending the introduction of Option A and Option B proposals if adopted.

1.6.12 Calculating the LGCI	
<p>36. The cost items listed in Table 17.3 of IPART's Report should form the basket of indicators included in the local government cost index.</p> <p>37. IPART should be responsible for weighting the cost items in the index on a 5 yearly basis. A state-wide index would be adopted unless systematic differences in expenditure weights for specific council groupings are demonstrated.</p> <p>38. The inflators listed in Table 17.5 of IPART's Report should be used to escalate the components of the cost index on an annual basis.</p> <p>39. The LGCI and its calculations should be published on March 1st each year, using the most recent available data from the Australian Bureau of Statistics.</p>	<p>The expense categories don't seem to reference the statutory imposts from State Government e.g. Fire Services, Valuation Fees and EPA levies which generally have increased substantially in excess of cpi. In addition the impacts of the GFC particularly in respect of defined benefits superannuation costs and substantial income reduction associated with interest on investments and building and development fees should also be considered. These events have significantly impacted on councils revenue and expenditure base and consideration of an appropriate interim adjustment allowance pending economic recovery is promoted. Once markets stabilise and economic activity returns the cumulative adjustment effect could be netted off that years index. There is some merit in a specific indices grouping as coastal councils experience higher levels of maintenance due to accelerated asset deterioration and the corrosive nature of the environment. The public availability of the cost index is welcomed and will enable councils to structure their own index for comparison and relativity to the rate cap.</p>
<p>40. A preliminary cost index, based on year to September quarter data, should be published in December each year.</p>	<p>The data sets supporting the index should be the most current available however the publishing a preliminary index based on year to September quarter and released in December would be most helpful for budgeting purposes.</p>
1.6.13 Regulating rate revenue only	
<p>41. The regulatory framework should impose controls on rate revenue only.</p>	<p>Council restates its opposition to rate capping but concedes that if it is to continue then the regulatory framework should apply to it only.</p>
1.6.14 Framework for statutory authorities	
<p>42. The NSW Government should enact legislation that provides for a dispute resolution process to enable special development authorities and relevant councils to undertake negotiation, mediation and ultimately arbitration to reach a binding agreement on payment for local services provided by authorities.</p> <p>43. The dispute resolution framework should initially require the parties to undertake negotiations. Should negotiations not result in an agreement, then the process could require the parties to submit to mediation. Finally if no agreement can be reached, the framework should require the parties to submit to a binding adjudication process similar to arbitration.</p> <p>44. The amount that the authorities can receive from councils should be limited to the amount that councils save because the authorities, and not councils, are providing the service.</p> <p>45. Prior to the implementation of any legislative scheme councils, SHFA and SOPA should consider whether some local services would be better managed by council and transferred, where parties agree.</p>	<p>These recommendations do not relate to NCC. They relate to concerns by the Sydney Harbour Foreshore Authority and Sydney Olympic Park Authority that they are providing services that would ordinarily be provided by local government and receiving no corresponding revenue or share of rate income. The two adjoining councils in dispute are the City of Sydney and Auburn.</p>