

FFTF – LGNSW Submission: IPART FFTF Final Report – LGNSW Response – Comments and Critique

November 2015

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Issue

There are a number of concerns in respect of IPART's assessment process and findings, which effectively constitute a moving of the goalposts since the FFTF process was announced.

IPART's assessment process and final report appear to contain inconsistent and illogical findings in relation to some councils' FFTF assessments, raising a number of concerns about its consistency with the original principles, terms of reference and assessment methodology and questioning the validity and authenticity of the entire process.

The main concerns and criticisms are:

- IPART's report is inconsistent with its own methodology.
- Inconsistencies in the way IPART has treated different councils and applied the immeasurable scale and capacity criterion.
- IPART's report lacks detailed evidence, explanation and analysis and relies on the Independent Local Government Review Panel (ILGRP) recommendations as the fall back position.
- The Government-funded Merger Business Case findings have been ignored.
- Community consultation has not been listened to, despite the Government requiring and encouraging councils to consult their communities.
- The perverse outcome of an assessment based primarily on scale and capacity, means that many financially fit councils cannot access TCorp loans because IPART has found them unfit due to scale and capacity.
- The Global City is a fiction – not based on any real model.
- Joint Organisations in the metropolitan area have been disallowed.
- There has been a backflip on advice re non-preferred options – especially given misleading information given by OLG to councils in the early days of preparing their template 1 and 2 submissions.
- IPART has resurrected the concept of a Rural Council model, contravening the Government's earlier policy.

These are discussed in Attachment 1.

For all of the above reasons, it has become clear that councils, which have committed significant resources in good faith to participate in this process, have been misled on many counts, with the result that ultimately valuable resources have been wasted on a process that appears to have had a predetermined outcome.

Councils have been set up to fail by virtue of the way that IPART has developed and applied its methodology. Even those which are financially sustainable and are large in scale (e.g. City of Sydney,

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Lake Macquarie) and have capacity in terms of their ability to deliver services to their communities, have been assessed as unfit.

Recommendation

- (1) In considering its final response to the IPART report, the Government should ensure that it returns to its originally agreed process and principles for reform, in the interests of securing a sustainable outcome from the reform process for all communities across the State.

Reasons for Recommendation

IPART's inconsistent interpretation and treatment of councils' proposals, combined with concerns expressed previously by the MAG about the entire assessment process (i.e. the perceived lack of impartiality and late public announcement of IPART as the 'independent' expert panel, the rushed process, and the changed rhetoric and benchmark for 'scale and capacity' suggested in the IPART Methodology), have the real risk of eroding any remaining confidence that the process has been consistent, fair, impartial and balanced, in accordance with the principles laid out in the original Terms of Reference.

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ATTACHMENT 1

- **IPART’s report is inconsistent with its own methodology**

IPART stated in its final Methodology that it “*has not specified minimum populations*”¹ but will “*be guided by the population estimates for the particular LGA included with the ILGRP’s recommended options*”². Yet in some instances, IPART has resorted to population forecasts as an argument for rejecting a council’s scale and capacity.

Councils had been previously advised at OLG workshops that there were no target council numbers or minimum population sizes. Further, throughout its consultation phase, IPART offered inconsistent and potentially conflicting responses on how these figures would be determined. It is therefore unfair to introduce them to the assessment process as an argument for a council failing on ‘scale and capacity’.

Another example of IPART being inconsistent with their own methodology is where councils could submit an alternative proposal if that proposal is “as good or better than” the ILGRP options. However, in the final assessment, IPART seems to have automatically disregarded council’s alternative proposals without duly considering if they are as good as the preferred merger option. IPART states:

*“We assessed all Inner Metropolitan Sydney councils that had a preferred merger option, but submitted a stand-alone proposal, as not fit, as they did not meet the scale and capacity criterion”*³

- **Inconsistencies in the way IPART has treated different councils and applied the unquantifiable scale and capacity criterion.**

Throughout the process, the scale and capacity criterion has been consistently criticised as being ill-defined, subjective and difficult to measure or validate. Further, that these two elements should be two separate criteria, not treated together. In its final methodology, IPART advised that the primary measure of scale and capacity was whether or not a council’s proposal was consistent with the ILGRP’s preferred option for that council⁴, and that:

*“The onus is on the council to demonstrate how it meets the strategic capacity requirements..., particularly if it chooses an option different from the ILGRP’s recommendation. We will use our judgement in assessing strategic capacity based on the information we have available, given that there are no standardised benchmarks for these requirements.”*⁵

IPART itself has thus recognised that there are no metrics for measuring the elements of ‘scale and capacity’. It is inappropriate to base the ultimate fate of many councils on weakly defined immeasurable concepts of ‘strategic capacity’. It is therefore questionable that relying on IPART’s “judgement” to effectively determine the fate of many councils is a fair, consistent, and truly evidence-based approach.

Basing minimum population and a target number of councils on the ILGRP preferred options raised numerous issues including consistency in application across the state and the relevance of the options in the first place. The issues of inconsistency are readily apparent when looking at the

¹ IPART, *Methodology for the Assessment of Council Fit for the Future Proposals*, June 2015 p. 71

² Ibid. p.31

³ Ibid. p. 9

⁴ Ibid. p 8

⁵ Ibid. p. 31

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range of population outcomes that would result from the full application of the ILGRP preferred options – council population sizes would range from less than 10,000 (e.g. Coonamble, popn:4970) to over 500,000 (e.g. Sydney Global City). This tells us that population size is not the primary issue.

- **IPART’s report lacks detailed evidence, explanation and analysis and relies on the Independent Local Government Review Panel (ILGRP) recommendations as the fall back position.**

One of the failings of IPART’s analysis is the fact that it blindly accepted the recommendations of the ILGRP, without any real analysis of the Panel’s options.

The ILGRP was made up of a group of three individuals who offered some suggested options for boundary changes and recommended a “*well-managed, four-step process*”⁶ for any such future changes. In proposing these options, the ILGRP emphasised that “*setting out desirable options....is NOT the same as recommending forced amalgamations*”⁷ and “*any amalgamation or major boundary change should be preceded by careful analysis of the issues to be addressed and all the options available*”⁸.

Unfortunately, IPART’s review process contained no such careful analysis and effectively became a sorting exercise – identifying and separating those councils whose proposals differed from the ILGRP options and those which were consistent, and bringing about the failure of many councils on this basis.

- **The Government-funded Merger Business Case findings have been rejected**

By engaging its own economic consultants, IPART appears to have rejected the Government-funded merger business cases prepared by consultants on behalf of many councils. This effectively renders the entire business case process a waste of councils’ time and the Government’s money. IPART’s engagement of economic consultants was also outside its Terms of Reference.

- **Community consultation has not been listened to, despite the Government requiring and encouraging councils to consult their communities**

The Government obliged and encouraged councils to consult their local communities yet the feedback from communities has been largely ignored in IPART’s assessments. Councils and communities were misled by the inference that communities’ choices would be heeded. The absence of any meaningful acknowledgement by IPART of the communities’ input suggests the community engagement was a waste of time and resources. This means communities have been treated with contempt.

- **The perverse outcome of an assessment based primarily on scale and capacity, means that many financially fit councils cannot access TCorp loans because IPART has found them unfit due to scale and capacity.**

Councils have been promised the opportunity to apply for low interest loans via TCorp if they are assessed as fit for the future. 92% of metropolitan councils and 76% of non-metropolitan councils met the financial criteria overall, yet many of these received a ‘not fit’ rating from IPART, on the

⁶ ILGRP, *Final Report of the Independent Local Government Review Panel*, October 2013, Section 10.3

⁷ ILGRP, *Final Report of the Independent Local Government Review Panel*, October 2013, p. 74

⁸ Ibid. p.74

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basis of failing the scale and capacity criterion. It is illogical and unacceptable that financially sustainable councils should be punished because of an inconsistent and subjective interpretation of scale and capacity. TCorp's key concern in granting loans is to be assured councils' financial sustainability, not whether they complied with the ILGRP's suggested options for mergers and hence have 'scale and capacity'.

- **The Global City is a fiction – not based on any real model**

The concept of the Global City - "a greatly enlarged city that takes in the whole of the Eastern Suburbs and stretches south to the airport and Port Botany"⁹ – is but one of a number of options that could be considered for the Sydney CBD and surrounding suburbs, but before any decision is made to blindly forge a merger of these five councils there needs to be much greater analysis and detailed assessment of costs and benefits.

- **Joint Organisations in the metropolitan area have been disallowed**

Since JOs are seen as contributing to scale and capacity in rural and regional areas, the same principle should have been afforded to councils in the Sydney Metropolitan Area. While there has been a heavy reliance on the recommendations of the ILGRP for many councils, the other inconsistency has been the deviation from the ILGRP when it comes to JOs in metropolitan area. Metropolitan councils have been disadvantaged by their formal exclusion from the JO option.

During the proceedings of the public forums IPART indicated that Joint Organisation (JO) type proposals by metropolitan councils would be considered, yet IPART's methodology was silent on how these alternatives would be assessed. Despite such a joint proposal being put forward by three metropolitan councils¹⁰ as an alternative to a merger, there is little evidence in IPART's response that it ever considered this option as a serious contender. IPART has based its assessment on rigid adherence to the ILGRP merger suggested for those councils.

- **Backflip on advice re non-preferred options - Misleading information given by OLG to councils in the early days of preparing their template 1 and 2 submissions**

Councils were advised at OLG workshops to address the ILGRP's preferred options, yet IPART has marked councils down because they did not address or explore all ILGRP options.

Until the release of the methodology, the primary message on amalgamations had been that small councils needed to find ways to improve their strategic capacity and that the Government would facilitate mergers for those councils which chose to pursue the merger option. In applying its methodology IPART has presented a substantial departure from this stance by imposing the view that proposals that differed from the preferred ILGRP merger option will be declared 'not fit'. This, coupled with the Government's refusal to rule out forced amalgamations, is unnecessarily coercive.

- **IPART has resurrected the concept of a Rural Council model, contravening the Government's earlier policy**

In assessing Rural Councils against the scale and capacity criterion, IPART has reintroduced the idea of a structural Rural Council Model, noting that "If a Rural Council model is not adopted, it is

⁹ ILGRP, *Final Report of the Independent Local Government Review Panel*, October 2013, p.100

¹⁰ Joint Regional Authority (JRA) proposed by Hunters Hill, Lane Cove and Ryde Councils

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likely that most Rural Councils would be assessed as not meeting the scale and capacity criterion, and as a result, not fit.”¹¹ This represents a total reversal of the Government’s confirmation earlier this year that “The model is no longer being proposed... *There will be no change to the way that councils are named, nor mandated changes to operations.*”¹²

¹¹ ILGRP, Final Report of the Independent Local Government Review Panel, October 2013, p.30

¹² OLG, *Fit for the Future Newsletter*, April 2015