THE CITY OF NEWCASTLE

Councillors

Pursuant to Clause 18 of the Code of Meeting, notice is hereby given that an EXTRAORDINARY MEETING of the Council will be held as follows:

DATE: Tuesday 17 November 2015
TIME: 6.00pm
VENUE: Council Chambers
        2nd Floor
        City Hall

F Cordingley
Interim Chief Executive Officer

City Administration Centre
282 King Street
NEWCASTLE NSW 2300

13 November 2015

BUSINESS

1 CCL 17/11/2015 - IPART REPORT ON "FIT FOR THE FUTURE" NSW GOVERNMENT RESPONSE

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EXTRAORDINARY COUNCIL MEETING
17 November 2015

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SUBJECT: CCL 17/11/2015 - IPART REPORT ON "FIT FOR THE FUTURE" NSW GOVERNMENT RESPONSE

REPORT BY: CORPORATE SERVICES
CONTACT: INTERIM CHIEF EXECUTIVE OFFICER / DIRECTOR CORPORATE SERVICES

PURPOSE

To report back to Council in accordance with the resolution of Council at the Ordinary Council Meeting held on 27 October 2015.

RECOMMENDATION

1 Council receives this report; and

2 Council delegates authority to the Interim Chief Executive Officer to respond on Council's behalf to the NSW State Government by 18 November 2015, regarding the following matters, via an on line template in the required format (refer Attachment A):

   a) feedback on IPART's assessment of the Council's Fit for the Future (FftF) submission as follows:

      "Newcastle City Council meet all of the FftF financial criteria and believe the methodology used to assess the Scale and Capacity criterion was flawed and refutes IPART’s assessment that it is not fit. NCC remains committed to maintaining its long-term financial sustainability and serving the community as a stand-alone council"

   b) the preferred merging partner: Noting that neither LMCC nor PSC have agreed to merge with NCC the preferred merging partner be a matter for Council to determine.

KEY ISSUES

3 On 20 October 2015 the Premier of NSW released IPART's Final Report detailing its assessment of Council's Fit for the Future Proposals (Report). This Report assessed Newcastle City Council (NCC) as "not fit". The Report notes that "Lake Macquarie and Newcastle did not show their proposals to stand alone were as good, or better than, the merger option." Accordingly, IPART concluded that NCC did not satisfy the scale and capacity criterion, but confirmed that NCC satisfied all of the financial criteria.

4 In the Report IPART also indicated that "our analysis and findings are consistent with the ILGRP final report which concluded the preferred option was for Newcastle to Merge with Lake Macquarie."
5 The commentary below is provided in response to the resolution of Council passed at the Ordinary Council meeting held on 27 October 2015, in the same order as the resolution (refer Paragraph 18 below for extract):

**A1 The ramifications and the implications of the IPART Report on Newcastle**

6 The NSW State Government (Government) has offered to make $20m ($10m to assist with merger costs and $10m to invest in community infrastructure) of funding available to a merged entity should NCC and its merger partners and the Government all agree to a merger and the preference is lodged by 18 November 2015.

7 The Government has provided no further guidance on what the ramifications and implications will be for NCC should it not agree by 18 November 2015 to proceed with a merger. In other words, there is no guarantee that the offer of $20m would still be available to a merged entity if the merger were to be agreed to post 18 November 2015 or completed subsequently on a non-voluntary basis.

**A2 The issues to be addressed in any further submission as invited by the Minister**

8 The Government has given councils a further 30 day period, closing on 18 November 2015, in which to reconsider the benefits of merging and respond to the IPART findings. The response is required to be provided in the required format via an on-line template (refer **Attachment A**). The Secretary of the NSW Department of the Premier and Cabinet, in a letter to Council dated 21 October 2015, stated that the response should address the following:

- Any comments you wish to make in relation to IPART's findings on your council's submission; and
- Any preferences the council may have regarding merging partners.

9 A number of meetings have been undertaken with Lake Macquarie City Council (LMCC) (both staff and elected officials) both prior to submitting our FftF proposal and following the release of the Report. In all of those discussions LMCC have strongly opposed any merger with NCC.

10 Given LMCC's opposition to a merger with NCC there would appear to be limited opportunity for NCC to meet the voluntary merger criteria of the FftF reform criteria. However a recent letter from the Premier, The Hon Mike Baird and Minister for local Government, The Hon Paul Toole dated 11 November 2015, notes that "councils that see the benefits of merging, but are unable to reach agreement with neighbouring councils should submit their merger preferences even if agreement has not been reached" (refer **Attachment B**).
A3. Alternative proposals to address the issues raised in the report

11 The Report found that NCC's proposal to remain a stand-alone council, did not meet the Scale and Capacity criterion and was therefore "not fit". IPART also noted that "…a merger of Lake Macquarie and Newcastle is likely to provide system wide benefits to their communities, better strategic capacity and broader benefits to NSW." IPART did not provide any alternatives to an amalgamation with LMCC.

12 In addition to the IPART recommended option of for NCC to amalgamate with LMCC there are a number of other potential alternative options which have recently been proposed by various parties including the Hunter Coast and Central Coast proposal (refer Attachment C). Under this option it is proposed to consolidate the five councils that exist from Gosford to Port Stephens into three large councils. This proposal splits the Wyong Shire Council (WSC) LGA into two sections via a boundary re-alignment which would see the northern part of WSC become part of the LMCC LGA and the southern section becoming part of the Gosford City Council (GCC) LGA. This option would also see NCC merge with Port Stephens Council (PSC). This proposal would also require further negotiations between NCC and LMCC to adjust the boundary between the two. The intention of the boundary adjustment is to develop a new boundary which broadly follows the water catchment boundaries, endeavours to follow main roads and railway lines, and which considers the communities affected by the change. The option would also require the agreement of PSC, who have been assessed by IPART as "fit" and are not required to consider merger options. To date they have not been willing to discuss this proposal.

13 The Government, has indicated that to satisfy their Fit for the Future reform criteria all parties to any proposed merger must be in agreement, supported by the Government and submitted by the deadline of 18 November 2015. The Government has also indicated that it will only consider boundary adjustments as part of a merger preference but not in place of a merger proposal.

14 Potential alternate reform proposals, together with a high level analysis of risks and opportunities, are provided below, in no particular order of precedence. No financial analysis has been undertaken for any of these proposals and accordingly cannot be commented on below:

<table>
<thead>
<tr>
<th>Merger with Lake Macquarie City Council (LMCC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opportunities</td>
</tr>
<tr>
<td>Supported by IPART report and satisfies all Fit for the Future reform criteria.</td>
</tr>
<tr>
<td>$20m of Government funding on offer if terms agreed by 18 November 2015</td>
</tr>
<tr>
<td>Consolidates communities currently split by an arbitrary boundary.</td>
</tr>
</tbody>
</table>
### Merger with Maitland City Council (MCC)

<table>
<thead>
<tr>
<th>Opportunities</th>
<th>Risks</th>
</tr>
</thead>
<tbody>
<tr>
<td>May satisfy FtF Scale &amp; Capacity criteria.</td>
<td>Not supported by IPART report.</td>
</tr>
<tr>
<td>Consolidates communities currently split by an arbitrary boundary.</td>
<td>IPART have recommended MCC merge with Dungog Shire Council.</td>
</tr>
<tr>
<td></td>
<td>Urban renewal focus may not be well aligned with significant rural demographic of MCC.</td>
</tr>
<tr>
<td></td>
<td>Will not provide Scale &amp; Capacity improvements as good or better than an NCC/LMCC merger.</td>
</tr>
<tr>
<td></td>
<td>MCC have indicated they are unwilling to progress this proposal with NCC</td>
</tr>
</tbody>
</table>

### Merger with Port Stephens Council (PSC)

<table>
<thead>
<tr>
<th>Opportunities</th>
<th>Risks</th>
</tr>
</thead>
<tbody>
<tr>
<td>May satisfy FtF Scale &amp; Capacity criteria.</td>
<td>Not supported by IPART report.</td>
</tr>
<tr>
<td>Opportunity to maximise existing synergies, such as jointly owned airport.</td>
<td>IPART Report assessed PSC as &quot;Fit&quot;- no incentive for them to merge.</td>
</tr>
<tr>
<td>Share a significant river boundary and adjoining coastline, which would fall within a single LGA.</td>
<td>Urban renewal focus may not be well aligned with significant rural demographic of PSC.</td>
</tr>
<tr>
<td></td>
<td>Will not provide Scale &amp; Capacity improvements as good or better than an NCC/LMCC merger.</td>
</tr>
<tr>
<td></td>
<td>PSC have declined to discuss this proposal.</td>
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</tbody>
</table>

### Boundary re-alignments with surrounding councils

<table>
<thead>
<tr>
<th>Opportunities</th>
<th>Risks</th>
</tr>
</thead>
<tbody>
<tr>
<td>May provide some operational efficiencies.</td>
<td>Not supported by IPART report.</td>
</tr>
<tr>
<td>May better align LGA boundaries with natural community boundaries.</td>
<td>Does not meet State Government Fit for the Future reform criteria.</td>
</tr>
<tr>
<td></td>
<td>Will not provide Scale &amp; Capacity improvements as good or better than an NCC/LMCC merger.</td>
</tr>
<tr>
<td></td>
<td>Neighbouring councils are unable to agree on boundary changes.</td>
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</table>
B1. **Notes that Newcastle meets all the financial criteria for future sustainability set by the State Government**

The Report confirms that NCC satisfied all of the financial criteria.

B2. **Writes to IPART requesting a clear outline of the methodology used to ascertain the extent to which Newcastle Council satisfied the criterion of "Scale and Capacity"**

A letter was issued to IPART by the Interim Chief Executive Officer (ICEO) on 4 November 2015 requesting IPART to provide, by 13 November 2015, a clear outline of the methodology used to ascertain the extent to which NCC satisfied the criterion of "Scale and Capacity". In a response received via email on 10 November 2015 IPART indicated that it would be unable to provide any "substantive written response" by 13 November 2015 as requested. It did however offer to discuss and provide more detail on the NCC IPART assessment via a teleconference. A teleconference was undertaken with the ICEO and the Director Corporate Services and two IPART representatives on Friday 13 November 2015. The Lord Mayor was invited to attend.

During the teleconference the IPART representatives confirmed that the Scale and Capacity criterion was assessed using the ILGRP preferred option (ie an amalgamation of NCC & LMCC) as the starting point against which the criterion would be assessed. Specifically IPART would assess whether NCC's proposal to remain a stand-alone council would provide as good or better outcome on a regional basis.

As the population of the NCC Local Government Area (LGA) is significantly less than the population of the amalgamated NCC LMCC LGA's NCC's proposal to remain a stand-alone council it was not considered to provide an as good or better outcome than the ILGRP preferred option and therefore failed to meet the Scale element.

The Capacity elements, which are extracted below from the IPART Assessment Methodology, were assessed using a similar methodology. IPART assessed that in terms of the "Credibility for more effective advocacy element" the NCC as a stand-alone council would provide an equivalent outcome to an amalgamated council, however in regard to all of the other elements IPART assessed that an amalgamated NCC/LMCC Council would provide a superior outcome to NCC as a stand-alone council.

**Box 3.1 Key elements of Strategic Capacity**

- More robust revenue base and increased discretionary spending
- Scope to undertake new functions and major projects
- Ability to employ wider range of skilled staff
- Knowledge, creativity and innovation
- Advanced skills in strategic planning and policy development
- Effective regional collaboration
- Credibility for more effective advocacy
- Capable partner for State and Federal agencies
- Resources to cope with complex and unexpected change
- High quality political and managerial leadership.

*Source: ILGRP Final Report, p 32.*
20 IPART however indicated that another important and perhaps more critical factor in their assessment was the Business Case which LMCC had commissioned by an independent consulting firm to analyse the benefits of an amalgamation between NCC & LMCC. This Business Case was referenced in LMCC’s FfT proposal and accordingly IPART requested that that it be submitted to them, which LMCC agreed to do and it was considered by IPART as a confidential submission. IPART indicated that this Business Case demonstrated that a merger of NCC and LMCC would provide NPV benefits to the combined NCC/LMCC communities of slightly below $200m.

B3. The Lord Mayor, Deputy Lord Mayor and General Manager liaise with neighbouring councils to discuss boundary adjustments that would provide benefit to the community.

21 The ICEO and the Lord Mayor had previously met with the Mayor and General Manager of MCC on 20 August 2015 and discussed a range of issues, particularly relating to boundary changes. It was indicated that the close knit community of "Berotarwood" (Beresfield, Tarro and Woodberry) is logical to keep together. NCC provides many services for all these communities (e.g. childcare, senior citizens facility, pool, library, golf course, large recreation area) and has worked closely with stakeholders in all these areas as typified by the "Berotarwood" MOU and Action Plan. MCC were interested in a boundary adjustment which saw the high value lands like Beresfield Business Park incorporated in their LGA. Agreement was not reached in these discussions on any outcome.

22 An approach was made to PSC on 6 November, 2015 for joint discussions but the reply received was that PSC had no appetite to further discuss LGA boundary adjustments with NCC. They pointed out that PSC has been assessed by IPART as being "fit", and having the scale, capacity and financial resources to meet its community needs, now and into the future.

B4. Consider a complete poll of electors, in accordance with Part 3 of the Local Government Act 1993, asking the question: "Should Newcastle City Council and Lake Macquarie City Council merge?"

23 In response to Council's Resolution that consideration be given to the conduct of a complete poll of the electors in the Newcastle Local Government Area in accordance with s. 14/Part 3 of the Local Government Act, Council has liaised with both the New South Wales Electoral Commission (NSWEC) and the Australian Election Company (AEC). NSWEC conducted the Lord Mayoral By-election in November 2014 and the Ward 3 Councillor By-election in February 2015 on behalf of Council. AEC conducted the ordinary Council election held in September 2012 on behalf of Council.
24 In response to Council's request as follows:

"Please advise the likely cost and feasibility associated with Council requesting the New South Wales Electoral Commission/AEC to undertake a complete poll of electors of the Newcastle Local Government Area in accordance with the provisions of Part 3 of the Local Government Act to ask its electors the following question "Should Newcastle City Council and Lake Macquarie City Council merge?" Please note that the proposed poll would need to occur prior to 18 November 2015 in order to facilitate Council determining its position with respect to the State Government's Fit For Future proposals (both councils were determined by IPART not to be Fit for the Future on the grounds of lacking scale and capacity) and the deadline set by the Government for the relevant councils to elect to amalgamate. [It is noted] that the poll would not be compulsory for electors and consequently the elector turnout may be relatively low compared to a normal full Council election or by-election."

25 NSWEC responded as follows:

"A council poll administered by the NSW Electoral Commission would essentially follow the same process and timing of a councillor/mayoral by-election. The regulated election period for a by-election is 40 days and hence would be the same for a council poll. Therefore it would not be possible to conduct a poll and have the result before November 18th 2015. The cost of running such a poll would be similar to the cost of your recent mayoral by-election (ie. approximately $400,000) [It is confirmed] that voting at a council poll is not compulsory and that decisions made at a poll are not binding."

26 AEC responded as follows:

"Whilst we would unreservedly like to assist, we feel that there would be insufficient time to appoint polling staff and conduct an attendance poll in the timeframe required.

We did consider conducting the poll over the internet which we could set up within a day or two but there is no provision in the Act for internet polling and timely access to roll data within the required timeframe could not be guaranteed. Unfortunately there does not appear to be anything we can do to assist on this occasion."

27 The reference to the 40 day period of time required for the conduct of the poll is specified in clause 278 of the Local Government (General) Regulation 2005. Specifically, clause 278(2) defines closing date in relation to an election or poll is the date of the fortieth day preceding the day for the election or poll. The reference to closing date is in the context of the closing of the roll of electors for the election. As an outcome of any poll proposed to be conducted by both NCC and LMCC envisaged by the resolution would be required prior to 18 November 2015, being the date that the Government requires a response via an on line template in the required format (refer Attachment A) it follows that the negative responses received by Council from the two alternative election
managers, to the effect that no polls can be conducted within the time constraints imposed, cannot be overcome.

FINANCIAL IMPACT

28 By failing to reach agreement with LMCC for a voluntary merger by 18 November 2015 the merged council will forego $20m of Government funding.

29 As the Government has provided no further guidance on what the ramifications and implications will be for NCC should it not agree by 18 November 2015 to proceed with a merger with LMCC, it is not possible to determine any financial impact associated with any action by the State Government after that date.

30 Internal staff costs associated with the preparation of this report will be met from existing operational budgets. There are no other costs directly associated with carrying out the recommendations contained in this report.

COMMUNITY STRATEGIC PLAN ALIGNMENT

31 Not applicable.

IMPLEMENTATION PLAN/IMPLICATIONS

32 Not applicable.

RISK ASSESSMENT AND MITIGATION

33 As the Government has provided no further guidance on what the ramifications and implications will be for NCC should it not agree by 18 November 2015 to proceed with a merger, it is not possible to assess any potential risks or required mitigation actions.

RELATED PREVIOUS DECISIONS

34 In response to a Notice of Motion, Council resolved at its meeting held on 28 May 2013:

That Newcastle City Council:

1 Commit to continue to strongly support local government as the level of government with the greatest grassroots participation and closest connection to people.

2 Maintain the right of local residents in local councils to determine the future of their councils and their local representation.

3 Work with our community and other councils to implement those recommendations of the Local Government Review Panel that increase the financial autonomy of local councils by ending rate pegging; and
4 Oppose the long-term agenda of the Local Government Review Panel to merge metropolitan and regional councils regardless of the wishes of local residents.

5 Notes that:

   a) It has strong concerns that the Local Government Review Panel is proposing the merger of Newcastle City Council with Lake Macquarie council without consulting the residents in either of these local government areas.
   b) Newcastle City Council has strong community support and that there is no clear case for it to be merged with neighbouring councils; and
   c) That any merger of Newcastle City Council with neighbouring councils will inevitably reduce the level of local representation and strength of local democracy in the Hunter.

6 A workshop be held for Councillors to better inform them of the status of the Panel’s work and its latest report. Council can develop a set of principles, upon which a submission can be written by Council Officers and submitted to the Panel.

35 At the Ordinary Council meeting held on 16 June 2015, Council endorsed the following:

   1. Council endorses the preparation and submission of Template 2 (Newcastle City Council’s Fit for the Future Improvement Proposal (Template 2)) for the Independent Pricing and Regulatory Tribunal (IPART). The proposal aims to demonstrate that the Council, on a stand-alone basis, can meet the targets for the four FftF criteria establishment by IPART as detailed in their Methodology for Assessment of Council Fit for the Future Proposals.

   2. Councillors be provided a copy of the draft FftF submission 5 days prior to lodgment.

36 At the Ordinary Council meeting held on 27 October 2015, Council endorsed the following:

   A An Extraordinary meeting of Council be held prior to 18 November 2015. That meeting will consider:

      1 The ramifications and the implications of the IPART report on Newcastle.
      2 The issues to be addressed in any further submission as invited by the Minister
      3 Alternative proposals to address the issues raised in the report

   B That Council:

      1 Notes that Newcastle meets all the financial criteria for future sustainability set by the State Government.
2  Writes to IPART requesting a clear outline of the methodology used to ascertain the extent to which Newcastle Council satisfied the criterion of “Scale and Capacity”.

3  The Lord Mayor, Deputy Lord Mayor and General Manager liaise with neighbouring Councils to discuss boundary adjustments that would provide benefit to the community.

4  Consider a complete poll of electors, in accordance with Part 3 of the Local Government Act 1993, asking the question: "Should Newcastle City Council and Lake Macquarie City Council merge?"

CONSULTATION

37  The Lord Mayor and the CEO have undertaken consultation with their counterparts at the following councils:
   - LMCC
   - MCC

38  PSC declined an invitation to meet.

OPTIONS

Option 1

39  The recommendation as at Paragraph 1 and 2. This is the recommended option.

Option 2

40  Not submit a response to the Government. This is not the recommended option.

BACKGROUND

41  In November the Government implemented the Fit for the Future (FftF) initiative which was aimed at reforming Local Government. The package provides support and incentive to voluntarily undertake reform and to help each council become FftF. The Government established four criteria it considered necessary for a council to be considered FftF:

- scale and capacity to engage effectively across the community, industry and government;
- sustainability;
- effectively managing infrastructure and delivering services for communities; and
- efficiency.
42 On 16 June 2015 Council endorsed the submission of a Template 2 Council Improvement Proposal to the Independent Pricing and Regulatory Tribunal (IPART). The proposal aimed to demonstrate that Council, on a stand-alone basis, could meet the targets for the four FftF criteria established by IPART as detailed in their Methodology for Assessment of Council Fit for the Future Proposals. The proposal was submitted by the 30 June 2015 deadline.

43 The report of the Parliamentary Inquiry into Local Government conducted by the General Purpose Standing Committee No.6 of the NSW Legislative Council entitled "Local Government in New South Wales" was released on 29 October 2015. The Minister for Local Government's response to the report is included as Attachment D.

44 LGNSW have released a document entitled "Local Government Reform - Frequently Asked Questions, which is attached for further reference (Attachment E).

46 Ashfield Leichhardt, and Marrickville Councils have all resolved to submit a joint merger preference. IPART found that, like NCC, all of those councils met the FftF financial criteria but failed to meet the Scale and Capacity criterion and were assessed by IPART as "not fit". The three councils received expert legal advice which indicated that the Government has the authority to initiate amalgamations without consent of councils and suspend councils and appoint an administrator during the process. A copy of this advice is included as Attachment F.
REFERENCES

ATTACHMENTS

Attachment A: The Secretary of the NSW Premier and Cabinet Department's letter dated 21 October 2015 including a copy of the on-line template for response.

Attachment B: Letter from the Premier, The Hon Mike Baird and Minister for local Government, The Hon Paul Toole

Attachment C: Hunter Coast and Central Coast Proposal Executive Summary November 2015

Attachment D: Media Release by the Minister for Local Government, Paul Toole entitled "Mergers the Solution to Curb Rate Rises" - 29 October 2015

Attachment E: LGNSW: Local Government Reform Frequently Asked Questions

Attachment F: Legal advice to Leichhardt Municipal Council
Mr Kenneth Gouldthorp  
General Manager  
Newcastle City Council  
PO Box 489  
NEWCASTLE NSW 2300

Email: k Gouldthorp@ncc.nsw.gov.au

Dear Mr Gouldthorp

The Premier, the Hon Mike Baird MP and the Minister for Local Government, the Hon Paul Toole MP, have written to your Mayor about the Independent Pricing and Regulatory Tribunal’s (IPART) assessment of your council’s "Fit for the Future" submission.

The NSW Government has announced a final period of consultation, which will close on Wednesday 18 November 2015. The consultation is an opportunity to inform the Government’s position on local government reform, and its response to IPART’s findings.

Should you wish to participate in this consultation:
• please provide any comments you wish to make in relation to IPART’s findings on your council’s submission; and
• if your council’s submission was found by IPART to be “not fit” as it did not meet scale and capacity, or if your council adjoins a council that did not meet scale and capacity, please advise of any preferences your council may have regarding merging partners.

To provide advice, please use the online template hosted on the Department of Premier and Cabinet’s website. Details will be provided separately on how to access this template.

A significant funding package is available for council mergers that are:
• supported by the merging partners; and
• supported by the Government.

Details of this package are available at www.dlg.nsw.gov.au. If you have any questions in relation to this letter, please contact John Clark, Executive Director on (02) 9228 3570 or Steve Orr, Executive Director on (02) 9228 5518.

Yours sincerely

Blair Comley PSM  
Secretary

21 October 2015
IPART Feedback

Councils have until 18 November 2015 to provide feedback to the Government on their IPART assessment. Councils whose submission was assessed by IPART as being not fit due to scale and capacity, or who neighbour a council who was not fit due to scale and capacity, have been asked to identify any preferences the council may have regarding mergers.

Please use the fields to provide your feedback and nominate your merger preferences. If you have no preferences, please leave this field blank.

Please check all entries before submitting, as once submitted the form cannot be edited.

Please enter your authorisation code: pmeny

Council Name: Newcastle City Council
General Manager: Kenneth Gouldthorp
Email Address: kgouldthorp@ncc.nsw.gov.au

What is your council’s feedback on IPART’s assessment of your council’s Fit for the Future submission? If you have no feedback, please leave blank.

If your council’s submission was assessed not fit due to scale and capacity, or your council neighbours a council who was assessed as not fit due to scale and capacity, please identify your council’s merger preferences using the fields. Please note you can enter up to three preferred mergers, which can include one or more merging partners. You are not required to use all the preferences. If you have no preference, please leave blank.

Preference One:
Please use the drop down boxes to identify your preferred merging partner/s.

Choose a council

Preference Two:
Please use the drop down boxes to identify your second preferred merging partner/s.

Choose a council

Preference Three:
Please use the drop down boxes to identify your third preferred merging partner/s.

Choose a council

Do you have any comments on the above preferences? Max. 50 words


22/10/2015
Dear Mayor

Thank you for your continued engagement on the Government’s Fit for the Future reforms. It is encouraging to see that many councils have responded positively to the opportunity for final consultation since the release of the IPART report and opened discussions with their neighbouring councils and the Government on the benefits of merging.

The Government is committed to recognising and supporting councils that have done the right thing by their community and agreed to merge. With less than two weeks until the end of the final consultation period, we are writing to clarify some issues that have been raised.

As you will be aware, the Government is providing significant funding for mergers. Up to $15 million is available to newly merged councils to invest in community infrastructure projects or better services. Funding of up to $10 million is also available to meet the upfront costs of merging. To access funding, mergers must be agreed to by councils, supported by the Government and submitted by the deadline of 18 November.

Councillors that have demonstrated an ability to work together in reaching agreement to merge will have the opportunity to shape the future of the new council and serve their community until the end of their current term. This will include input to decisions on service levels, branding, jobs, location of key administrative centres and/or local representation.

We ask you to consider carefully the interests of your community and the benefits of a larger council. We ask you to also consider the job protections in place (in particular for areas with fewer than 5000 people) and the guarantee the Government has given on services, infrastructure, rates and local representation.

Councillors that see the benefits of merging, but are unable to reach agreement with neighbouring councils, should submit their merger preferences even if agreement has not been reached. These councils will have the best opportunity to shape the future of the new council.

We look forward to receiving your response to the IPART findings and merger preferences by the November 18 deadline.

Following your Council’s response, the Government will take the next step in local government reform. The Government is strongly committed to ensuring ratepayers get value for money and the services and infrastructure they deserve, and benefit from the close to $2 billion in savings identified by IPART.

If you have any questions or would like to discuss your merger preferences, please do not hesitate to contact DPC Executive Directors John Clark (02 9228 3570) and Steve Orr (02 9228 5518).

Yours sincerely

Her. Mike Baird MP
Premier

Hon. Paul Toole MP
Minister for Local Government
$0.5 billion savings plan for Hunter Coast and Central Coast

Executive Summary
November 2015
Overview

- Regional population balance
- Smoother landing and less voter disruption
- Faster pathway to savings
- 3 distinct and compatible communities

Current LGAs and population:
- Port Stephens
- Newcastle
- Lake Macquarie
- Wyong
- Gosford

Gosford-South Wyong: 261,000
Lake Macquarie-North Wyong: 259,000
Newcastle: 156,000
Wyong LGA: 154,000
Gosford LGA: 168,000
Port Stephens: 223,000

Handwritten note: Land area Coastaleryl.
Business case

- Hunter Coast and Central Coast local governments spend $1 billion annually
- 5% Savings = $0.5 billion over 10 years
- Less than 2.5 year payback on implementation costs
- Smooth landing means faster pathway to savings
- Regional thinking fits with new programs
- Compatible communities reduces implementation cost and disruption
Global City

- Tier 2 Global City
- All key infrastructure in one place

- Ports
- University
- Industrial hub
- Defence
- Health

- Existing cost bases closely aligned
- Similar demographic profiles and needs
- Strong strategic outlook

Newcastle - Port Stephens

Newcastle-Port Stephens
223,000
Lake Macquarie - North Wyong

Vibrant Lake City

- City of vibrant town centres and lakes
- Proven greenfield capabilities and development experience
- Consolidates current cost efficient operators
- Strong natural resource management capability
- Comparable asset base
- Australia's largest coastal lake brought under one local authority
Consolidating the Central Coast

- Consolidates the Central Coast
- Shared key industries with strong workforce links
- Consistent management of 80km stretch of significant coastline
- Commonwealth investment hub
- Existing cost bases closely aligned
- Similar demographic profiles and needs
Hunter Coast and Central Coast

1. Regional population base
   - Three local government areas, each with a population of around 250,000
   - Able to effectively and equitably contribute to regional organisation of councils (Joint Organisation)

2. Smoother landing and less voter disruption
   - More equitable distribution of costs and benefits, reducing voter friction
   - Creates three new LGAs, giving each a fresh start
   - More compatibility between cost structures

3. Faster path to savings
   - $1 billion contribution to NSW economy
   - Ongoing efficiency gains deliver $0.5 billion over 10 years
   - Transaction costs paid back in less than 2.5 years

4. Three distinct and compatible communities
   - Newcastle - Port Stephens: Global City
   - Lake Macquarie - North Wyong: Vibrant Lake City
   - Gosford - South Wyong: Consolidating the Central Coast
Newcastle - Port Stephens

1. Tier 2 Global City
   - High profile tourist destination
   - Prominent skyline, reflecting colonial history
   - Centre for ideas and innovation
   - Strong arts culture
   - Regional finance and banking hub

2. All key infrastructure in one place
   - The largest export port in Australia, with significant tourism growth potential
   - Regional airport, with expanding international routes
   - Strategic national defence facility at Williamtown
   - World class university
   - High quality regional health facilities and services
   - Industrial and manufacturing hub

3. Existing cost bases closely aligned
   - Similar existing operating costs per resident

4. Similar demographic profiles and needs
   - Similar projected growth
   - Closely aligned levels of household debt and social advantage
   - Strong existing workforce links

5. Strong strategic outlook
   - Capable partner to deliver transport services for lower Hunter
   - Opportunity for integrated management of Stockton Beach, Stockton to Hoxham biodiversity corridor and lower Hunter estuary
Lake Macquarie - North Wyong

1. City of vibrant town centres and lakes
   - Existing capability to support unique identities of local communities
   - Strong community identity with local waterways

2. Proven greenfield capability and development experience
   - Strong urban planning capability, focused on residential land releases
   - Able to manage complex land use planning constraints

3. Consolidates current cost efficient operators
   - Lowest operating expenditure per capita of existing councils
   - Will deliver lower operating costs than alternative configuration
   - Similar existing employee rates of pay, reducing impact of pay harmonisation

4. Strong natural resource management
   - Effective, integrated management of the estuarine systems of Lake Macquarie, Lake Munmorah and Budgewoi Lake
   - Recognised capacity to manage nationally significant biodiversity corridors for endangered species such as the Squirrel Gilder and Black-eyed Susan

5. Comparable asset base
   - Relatively young asset profile with extensive network of roads and community facilities
   - Strong track record of asset renewal

6. Australia's largest coastal lake brought under one local authority
   - Surface water catchment and land use planning within a single LGA
   - Leverage internationally recognised Lake Macquarie improvement project
Gosford - South Wyong

1. Consolidates the Central Coast
   - Consolidates regional identity of the Central Coast
   - Supports existing public transport hubs

2. Shared key industries with strong workforce links
   - Existing strong workforce links retained
   - Common key industries are construction, manufacturing, real estate, retail and health services

3. Effective management of 80km stretch of significant coastline
   - Opportunity for integrated management of important coastal hot spots, such as Wamberal Beach and North Entrance
   - Opportunity to effectively manage regionally significant biodiversity corridors located on Hawkesbury Sandstone geomorphology

4. Commonwealth investment hub
   - Establishment of Australian Taxation Office, generating 800 local jobs
   - Support for development of Central Coast regional sporting and recreation complex
   - Investment in M1 to M2 road linkage

5. Existing cost bases closely aligned
   - Similar existing operating costs per resident
   - Comparable building and asset condition

6. Compatible demographic profiles and needs
   - Similar projected growth
   - Closely aligned levels of household debt and social advantage
Thursday, 29 October 2015

MERGERS THE SOLUTION TO CURB RATE RISES

Minister for Local Government Paul Toole today said recommendations of a Legislative Council inquiry into local government reform would condemn the community to higher rates and poorer services, reinforcing the need for council mergers.

“The recommendations released today would mean more of the same – higher rates, a growing infrastructure backlog and ultimately the collapse of some local councils,” Mr Toole said.

“Rates in NSW have been capped to protect the community from high rate rises. This report calls for that safeguard to be scrapped.

“That’s just tinkering with the current system when what we need is structural reform to ensure councils are fit to serve their communities now and into the future.

“That’s why the NSW Government will continue to safeguard the community by encouraging councils to merge, which will allow them to keep downward pressure on rates.”

Mr Toole said the Legislative Council committee had chosen to ignore much of the evidence that supported council structural reform.

“Four years of research and consultation with councils and the community has shown that the current system is not working as well as it should be,” Mr Toole said.

Earlier this month Mr Toole released IPART’s assessment of council fitness, based on standard industry benchmarks as well as extensive research and consultation with the sector.

IPART found that reducing red tape through local government mergers could free up to $2 billion over the next 20 years for NSW ratepayers.

“That extensive work produced a robust system by which the fitness of councils could be assessed, while this committee’s report offers a band-aid solution that will harm communities,” Mr Toole said.

“However, the report did acknowledge positive outcomes from the Fit for the Future
reforms, chiefly by highlighting the need for long term financial sustainability and improved performance of councils.

“The NSW Government’s Fit for the Future package is aimed at keeping downward pressure on rates – reducing the burden on mums, dads, families and pensioners.

“We need our councils to be strong and modern, so they can deliver more infrastructure, better services and have a secure economic future for ratepayers.”

MEDIA: Ashley Gardiner | Minister Toole | 0429 063 494
Local Government Reform – Frequently Asked Questions

Can the Government force councils to amalgamate?

Yes. The Local Government Act 1993 (NSW) (the “Act”) includes a scheme for amalgamating councils (the “amalgamation scheme”) and provided the Government follows the prescribed steps in the amalgamation scheme, the Government can force councils to amalgamate without the need for legislative change.

What steps must the Government follow if it decides to force councils to amalgamate?

Refer to Appendix A.

Does the Government have to follow all of the steps in the amalgamation scheme to force councils to amalgamate?

If the Government does not follow all of the steps in the amalgamation scheme the process may be exposed to legal challenge, and the further the Government deviated from the steps, the greater the potential for a successful legal challenge.

Are there any loopholes in the legislation that the Government could potentially use to force councils to amalgamate without having to follow the steps in the amalgamation scheme?

The Act contains various provisions concerning proclamations and the temporary suspension of councils which, at first blush, could be seen as an alternative means for facilitating the forced amalgamation of councils (see sections 213, 438I, 438W, 736 and 738). However, legal advice indicates that these are largely facilitative provisions and cannot be used as a substitute for the specific provisions of the Act concerning council amalgamations (although this is not free from doubt, especially in respect to section 738).

As indicated above, the further the deviation from the amalgamation scheme prescribed by the Act, the greater the potential for a successful legal challenge.

Does IPART’s 2015 assessment of councils’ Fit for the Future proposals or the ILGRP’s 2013 review of NSW Local Government constitute an inquiry for the purposes of the amalgamation scheme?

No.

Disclaimer:

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The inquiry that the Government is required to undertake as part of the amalgamation scheme must occur after a proposal period has been formally initiated under s215 or 218E of the Act by either the Minister, a council affected by the proposal or an appropriate minimum number of electors (as defined in the Act).

Further, the Act requires that there be at least 28 days’ public notice of the proposal [see ss216 and 218A(3)], and that the inquiry be undertaken by either the Boundaries Commission or Director General [s218F(2) and 263(2A)].

**Can the Government dismiss or suspend mayors and councillors, and then appoint administrators to facilitate the forced amalgamation of councils?**

Under the Act, the **Governor** has power to *dismiss* mayors and councillors, and the **Minister** has power to *temporarily suspend* mayors and councillors in certain circumstances.

The Act also contains provisions that empower the Governor/Minister to appoint an administrator in certain circumstances, such as where all councillors have been dismissed (s256) or temporarily suspended (s438M).

Legal advice suggests that these powers can only be exercised *bona fide* for the purposes of the administration of the Act. That means that if there was any evidence the powers were being exercised to get around the statutory limitations and protections for councils in the Act, the Government would be vulnerable to a legal challenge.

Any deviation from the Act’s amalgamation scheme and the purpose of its provisions leaves the Government open to legal challenge – and the greater the deviation, the higher the likelihood such a challenge would succeed.

**What are the circumstances required for the Governor to dismiss councillors?**

The **Governor** may, by proclamation, declare all civic offices in relation to a council to be vacant:

- Following a public inquiry, if the Minister recommends that the Governor make such a declaration [s255], **OR**
- Without a public inquiry, if the Minister recommends that the Governor make such a declaration and ICAC, following an ICAC investigation, recommends that consideration be given to the making of such a declaration because of systemic corruption within the council [s255].
What are the circumstances in which the Minister may temporarily suspend a council?

There are two circumstances where the Minister may, by order published in the Gazette, temporarily suspend all councillors of a council. These include:

a) To restore the proper or effective functioning of the council, OR

b) Where the Minister considers it in the public interest.

These are briefly discussed in more detail below.

a) Temporary suspension to restore the proper and effective functioning of the council

To fulfil the legislative requirements of this option, the Minister must:

- reasonably believe the appointment of an interim administrator is necessary to restore the proper or effective functioning of the council; AND
- have considered the suspension criteria at Regulation 413E of the Local Government (General) Regulations 2005; AND
- have given the council notice in writing of his or her intention to suspend the council [see s438I].

If a council is suspended by the Minister under the “proper or effective functioning” option, he is prohibited from initiating a proposal (and the Governor is prohibited from making a proclamation) to amalgamate the council or to alter the boundaries of the council while the suspension is in force [s438T].

In addition, where the Minister proposes to suspend a council, he or she is required to:

- give the council written notice of the intention to suspend the council; AND
- invite the council to make submissions in respect of the proposed suspension, AND
- have regard to those council submissions made during the consultation period in deciding whether to suspend the council [s438K].

b) Temporary suspension where the Minister considers it in the public interest

To meet the requirements of this option it is necessary that:

- a public inquiry relating to the council is held or to be held; AND
- the Minister considers it in the public interest to suspend the council [s438W].

What is in the ‘public interest’ is incapable of precise definition as there is no single and immutable public interest.

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The High Court of Australia has described “public interest” as follows:

“the expression 'in the public interest', when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only 'in so far as the subject matter and the scope and purpose of the statutory enactments may enable ... given reasons to be [pronounced] definitely extraneous to any objects the legislature could have had in view'.” [O'Sullivan v Farrer (1989) 168 CLR 210 at 216 per Mason CJ, Brennan, Dawson and Gaudron JJ].

Temporarily suspending councils to get around the requirements of the amalgamation scheme may leave the Government vulnerable to a legal challenge as such action is arguably not in the public interest.

**If the Government forces councils to amalgamate and/or dismisses or suspends councillors to facilitate amalgamation, what role (if any) would LGNSW play in any legal challenge?**

In order to appear in court or to take part in legal proceedings, a person or organisation must have standing. The general rule in Australia is that for a person to have standing, their private rights and interests are (or will be) affected by the matter, or they have a "special interest" in the subject matter.

Whether LGNSW has standing will depend on the nature and circumstances of any legal challenge.

LGNSW has ‘Legal Assistance Policy Guidelines' which set out the circumstances and process in which contributions may be sought from all councils to assist with a council's or its legal costs. Where LGNSW agrees to support a request for such assistance, contributions will be sought from councils. Contributions are entirely voluntary and no council is under any obligation to make a contribution in any instance. LGNSW's Legal Assistance Policy Guidelines are available on the LGNSW website: www.lgnsw.org.au
APPENDIX A – Amalgamation Scheme (forced amalgamations)

The *Local Government Act 1993* (NSW) (the “Act”) contemplates two processes in which councils may be forced to amalgamate.

Firstly, the Governor may, by proclamation, dissolve the whole or part of any council area [s212] and then constitute any part of New South Wales as a new area [s204].

Secondly, the Governor may, by proclamation, amalgamate two or more areas into one or more areas, with the effect that the former areas are dissolved and the new area or areas are constituted [s218A].

The above two processes in which councils may be forced to amalgamate involve similar steps [see section 218A(3)], as follows:

**STEP 1:** A proposal to amalgamate two or more councils (a “proposal”) must be formally initiated under s215 or s218E of the Act. A proposal may be initiated by:

- the Minister;
- a council affected by the proposal; or
- an appropriate minimum number of electors (as defined).

**STEP 2:** The Minister must give at least 28 days’ public notice of the proposal (the “public notice period”) [s216]. During the public notice period, representations concerning the proposal may be made to the Minister by a council or elector affected by the proposal [s217].

**STEP 3:** The Minister must consider all representations made by a council or elector affected by the proposal that are made within the public notice period [s217(2)].

**STEP 4:** If the Minister decides to proceed with the proposal, the Minister must refer the proposal to either the Boundaries Commission or the Director General for examination and report [s218F].

Note: Section 218F(2) provides that sections 263, 264 and 265 apply to the examination of a proposal by the Director-General in the same way as they apply to the examination of a proposal by the Boundaries Commission.

**STEP 5:** The Boundaries Commission or Director General must consider the attitudes of the residents and ratepayers and must hold an inquiry [s263(2A)].

Section 263 of the Act prescribes various requirements that must be complied with as part of the inquiry into the proposal. These include:

- the giving of reasonable public notice of the holding of the inquiry [263(2B)].

- When considering the proposal, consideration is required to be given to various criteria, including:
the financial advantages or disadvantages (including the economies or diseconomies of scale) of any relevant proposal to the residents and ratepayers of the areas concerned;

- the community of interest and geographic cohesion in the existing areas and in any proposed new area;

- the existing historical and traditional values in the existing areas and the impact of change on them;

- the attitude of the residents and ratepayers of the areas concerned;

- the requirements of the area concerned in relation to elected representation for residents and ratepayers at the local level, the desirable and appropriate relationship between elected representatives and ratepayers and residents and such other matters as it considers relevant in relation to the past and future patterns of elected representation for that area;

- the impact of any relevant proposal on the ability of the councils of the areas concerned to provide adequate, equitable and appropriate services and facilities;

- the impact of any relevant proposal on the employment of the staff by the councils of the areas concerned;

- the impact of any relevant proposal on rural communities in the areas concerned,
  - in the case of a proposal for the amalgamation of two or more areas, the desirability (or otherwise) of dividing the resulting area or areas into wards;
  - in the case of a proposal for the amalgamation of two or more areas, the need to ensure that the opinions of each of the diverse communities of the resulting area or areas are effectively represented;

- such other factors as it considers relevant to the provision of efficient and effective local government in the existing and proposed new areas.

- Members of the public must be allowed to attend the inquiry [263(5)].

The Boundaries Commission (or Director General) has an obligation to afford procedural fairness in the exercise of its statutory functions (see South Sydney City Council v Minister for Local Government and Another [2002] NSWLEC 74 at [48]-[52]).

STEP 6 When considering the proposal, the Boundaries Commission or Director General must give proper, genuine and realistic consideration and not merely pay lip service to relevant matters (see South Sydney City Council v Minister for Local Government and Another [2002] NSWLEC 74 at [63]).
STEP 7 If the proposal was referred to the Director General and not the Boundaries Commission, the Director General must furnish their report to the Boundaries Commission for review and comment, and the Boundaries Commission must review the report and send its comments to the Minister.

STEP 8 The Boundaries Commission furnish their report and/or comments to the Minister.

STEP 9 Following the examination and report by the Boundaries Commission or Director General, and furnishing of the report to the Minister, the Minister may:

- recommend to the Governor that the proposal be implemented:
  1. with such modifications as arise out of the Boundaries Commission’s report, and
  2. with such other modifications as the Minister determines,

but may not do so if of the opinion that the modifications constitute a new proposal.

- decline to recommend to the Governor that the proposal be implemented.

STEP 10 The Governor, by proclamation, implements the proposal.

Note: Section 738(1) of the Act provides:

“A proclamation or notification of the Governor purporting to be made under this Act and being within the powers conferred on the Governor is not invalid because of any non-compliance with any matter required by this Act as a preliminary to the making of the proclamation or notification.”
Confidential

26 October 2015

Our ref: LMC15007
Your ref:

The General Manager
Leichhardt Municipal Council
7-15 Wetherill Street
LEICHHARDT NSW 2040

Attention: Mark Bonanno

Email

Dear Sir,

Advice re the ability to implement of IPART’s Fit For The Future Report Recommendations

1 I refer to Mark Bonanno’s email dated 20 October 2015 seeking advice in relation to the above.

Advice required

2 The specific questions for my advice are as follows:

2.1 Given the State Government’s response to the IPART Fit for the Future paper released today, can the State Government administratively implement compulsory amalgamations as per the IPART recommendations?

2.2 If the answer to the above is ‘yes’ please advise what the process would likely be?

2.3 Please identify any steps at which Council could challenge the State Government at law, and advise the likely outcome of such challenge?

3 I have also been asked to consider a possible defensive strategy were the Minister to proceed with a proposal without consulting electors.

Background

4 In April 2015, the NSW Government requested the Independent Pricing and Regulatory Tribunal (IPART) to undertake the role of the Expert Advisory Panel in assessing local government ‘Fit for the Future’ (FFTF) proposals and recommend whether each council is ‘Fit for the Future’, in accordance with its terms of reference.

assessment of whether the local councils are FFTF based on the proposals submitted.


7 In relation to Leichhardt Municipal Council (Council), ILGRP’s preferred option in the Inner West was a merger between Ashfield, Burwood, Canada Bay, Council, Marrickville and Strathfield, or combine as a Joint Organisation.

8 Auburn, Burwood and Canada Bay submitted a voluntary, alternative merger to the option identified by ILGRP. IPART assessed this merger proposal as FFTF.

9 In relation to Council and the remaining Inner West councils, IPART found (at p49):

9.1 Ashfield, Leichhardt, Marrickville and Strathfield are not FFTF ‘as they did not meet the scale and capacity criterion although each council met the financial criterion overall’; and

9.2 these councils did not demonstrate that their proposals to stand alone would be as good as or better than the merger.

10 The IPART Report further states that Council, Ashfield, and Marrickville commissioned a business case for an Inner West merger. IPART and its consultant, Ernst & Young, each estimated the net present value benefits the merger could produce. Whilst there was a substantial difference between these estimates, IPART concluded that both analyses ‘showed large gains to the local community from a merger’ (p49).

11 The IPART Report does not make any recommendations on amalgamations (compulsory or otherwise) of local councils.

12 Relevantly, it does not recommend that Council should merge as per the commissioned business case for an Inner West merger.

13 The NSW Government has now given councils until 18 November 2015 to respond to IPART’s findings, and requested that councils who were assessed as being not fit due to scale and capacity, such as Council, to know the merger preferences of these councils (see Circular to Councils, ‘Release of IPART’s Fit for Future report – Announcement of Stronger Communities Fund’, 15-36 / 20 October 2015 / A443433).

Summary

14 The better view is that the Government can only implement forced amalgamations if it follows the procedures in Division 2A in Part 1 of Chapter 9 of the *Local Government Act 1993* (LG Act).

15 Those procedures require a Boundaries Commission to prepare a report having regard to listed criteria.

16 The criteria differ from those considered by the IPART and underpin whether a council is FFTF.

17 If the Government attempts to use the dissolution of areas power to implement amalgamations, rather than the process in Division 2A, we think that there would be reasonable grounds to argue that this is beyond the scope of the power. On this basis, we think it should be unlikely that the Government will proceed in this way.

18 Having said that, if the Minister were to use those powers, he may also attempt to suspend councils and appoint administrators to those councils while a public enquiry is held on grounds that it is in the public interest to do so.
Before doing so, we think that affected councils and probably councilors would need to be afforded procedural fairness.

But if the suspensions did proceed, it would have the practical effect of preventing the affected councils from using their own resources to challenge the legality of the Minister’s approach.

There may prove to be other grounds to challenge the Government’s approach to amalgamations on administrative law grounds, but it is not possible to say at this stage because nothing has been done to implement the FFTF assessments prepared by IPART.

I do not consider that councils putting forward their own amalgamation proposal (being a proposal on which electors would need to be consulted) would be a legal impediment to the Minister acting on his own proposal, but it may be political impediment.

Advice

Relevant Provisions

For convenience, we have reproduced in the Appendix provisions of the LG Act relevant to this matter.

We make specific reference to the most relevant aspects below.

Amalgamations

Division 2A in Part 1 of Chapter 9 of the LG Act sets out a process for compulsory amalgamation of council areas. We refer to this as the Division 2A process in this letter.

The amalgamation of areas under Division 2A is done by proclamation of the Governor (s218A(1)).

If an amalgamation is proclaimed:

27.1 It may contain a range of provisions necessary or convenient to give effect to the amalgamation, for example as regards transfer of staff, assets, rights and liabilities (s218C(1); s213); and

27.2 Councillors of the former areas cease to hold office except as otherwise provided for in the proclamation (s218A(2) and 218C(2)).

Before an amalgamation under Division 2A may occur:

28.1 There must be a proposal to do so made (s218E):

28.1.1 by the Minister;

28.1.2 to the Minister by a council affected by the proposal; or

28.1.3 by a prescribed number of electors,

28.2 The proposal must be referred for examination by the Boundaries Commission or the Director-General (s218F(1)) and a report made to the Minister (s263(1));

28.3 The Boundaries Commission or Director-General (as relevant) must:

28.3.1 hold an enquiry (s263(2A)) open to the public (s263(5));

28.3.2 have regard to the following matters:
(a) the financial advantages or disadvantages (including the economies or diseconomies of scale) of any relevant proposal to the residents and ratepayers of the areas concerned,

(b) the community of interest and geographic cohesion in the existing areas and in any proposed new area,

(c) the existing historical and traditional values in the existing areas and the impact of change on them,

(d) the attitude of the residents and ratepayers of the areas concerned,

(e) the requirements of the area concerned in relation to elected representation for residents and ratepayers at the local level, the desirable and appropriate relationship between elected representatives and ratepayers and residents and such other matters as it considers relevant in relation to the past and future patterns of elected representation for that area,

(e1) the impact of any relevant proposal on the ability of the councils of the areas concerned to provide adequate, equitable and appropriate services and facilities,

(e2) the impact of any relevant proposal on the employment of the staff by the councils of the areas concerned,

(e3) the impact of any relevant proposal on rural communities in the areas concerned,

(e4) in the case of a proposal for the amalgamation of two or more areas, the desirability (or otherwise) of dividing the resulting area or areas into wards,

(e5) in the case of a proposal for the amalgamation of two or more areas, the need to ensure that the opinions of each of the diverse communities of the resulting area or areas are effectively represented,

(f) such other factors as it considers relevant to the provision of efficient and effective local government in the existing and proposed new areas;

28.3.3 if the proposal is being dealt with by the Director-General and is not supported by one of more affected councils, the Director-General's report must subsequently be referred to the Boundaries Commission for review and comment to the Minister (s218F(6));

28.3.4 if the proposal has been made by 2 or more councils, the Boundaries Commission or Director-General, as the case may be, must over a period of at least 40 days seek the views of electors of each of those areas by means either of:

(a) public meetings, invitation for submissions, advertised public meetings, and postal surveys or opinion polls, in which reply-paid questionnaires are distributed to all electors; or

(b) by means of formal polls (ss218F(3) and (4));

28.3.5 the Minister may make a recommendation to the Governor that the proposal be implemented whether with modifications arising out of the reports received or with such other changes as the Minister
determines so long as they do not constitute a new proposal (s218F(7)).

Possible Alternative Procedure - Dissolution and reconstitution of areas

29 We have considered whether there is an alternative method of achieving amalgamations which might be less cumbersome for the Government than the procedure under Division 2A.

30 If there is an alternative, it would be as follows.

31 Under s212(1) of the LG Act, the Governor may dissolve an area after a ‘public inquiry’ has been held and the report considered by the Minister.

32 A ‘public inquiry’ within the meaning of s212 is a public inquiry held under Part 8 of Chapter 13.

33 Although the matter is not entirely free from doubt, such an inquiry can be carried out with respect to any matter relating to the carrying out of the provisions of the LG Act (s438U(1)(a))¹ and may therefore be carried out in relation to a dissolution proposal.

34 An important implication of such an enquiry process is that pending finalisation of that enquiry, the Minister can, by order published in the Gazette, suspend the council if the Minister considers it in the public interest to do so (s438W(1)).

35 We think that the Minister would need to provide procedural fairness to affected councils and probably councillors before doing so, but if the Minister did do so:

35.1 persons holding civic office in relation to the council are taken also to be suspended from office and not entitled to exercise any of the functions of civic office (s438X);

35.2 the Minister must appoint an administrator (s438Y(1)) (who would then have the power to decide whether or not to utilise the council’s resources to challenge the legality of the dissolution proposal);

35.3 the suspension can continue up until 30 days after the report of the enquiry is given (s438Z).

36 Following the report of the enquiry, the Minister would be free to decide on whether to recommend proceeding with dissolution/s and if so could simultaneously recommend the new amalgamated areas be constituted by separate proclamation under s204 of the LG Act.

37 Ultimately, however, we think that the Government should be unlikely to proceed in this way because there is a relatively good argument that the use of the dissolution power for the purpose of achieving amalgamations is unlawful on grounds that it is contrary to the scheme of the LG Act and therefore for an improper purpose.

38 Our reasons for this conclusion are as follows.

¹ There is an argument that in order to hold a public enquiry, the matter referred to in s438U(1)(b) must also be satisfied, namely that the enquiry must be in respect of an ‘act or omission of a member of a council, any employee of a council or any person elected or appointed to any office or position under this or any other Act conferring or imposing functions on a council, being an act or omission relating to the carrying out of the provisions of the Act concerned, or to the office or position held by the member, employee or person under the Act concerned, or to the functions of that office or position.’ However, in this case, in context of the scheme of the Act (eg s66 and s212), it cannot be intended to be so circumscribed in our opinion.
As explained above, there is a specific code for achieving amalgamations set out in Division 2A which is entitled ‘How are areas amalgamated or their boundaries altered?’

That scheme is expressly prescribed by s218A(2) to involve a process by which on the making of a proclamation:

40.1 the existing areas to be amalgamated or boundaries altered are dissolved, and
40.2 the new area or new areas are constituted.

If that is so, it seems to us that it is very unlikely to have been the intention of Parliament to allow that scheme to be by-passed in the manner outlined above, particularly when to do so would avoid the specific procedures and mandatory considerations and procedures intended to be carried out by the Boundaries Commission as set out in s263.

Indeed, it seems to us that if there ever had been a power to use the dissolution and constitution of area powers to achieve amalgamations, the insertion of Division 2A by the Local Government Amendment (Amalgamations and Boundary Changes) Act 1999, must have had the effect of impliedly repealing that authority; and the use of these powers for that purpose would now be regarded as improper and beyond power.

Relevance of the IPART Report

We note that the IPART Report assessed council proposals against the following criteria in order to determine whether the council was FFTF:

43.1 scale and capacity to engage effectively across community, industry and governments,
43.2 sustainability,
43.3 effectively managing infrastructure and delivering services for communities, and
43.4 efficiency.

As can be seen, although there is some overlap between these matters and the criteria specified in s263 (3) of the LG Act, they differ significantly with s263(3) criteria requiring a consideration of a much broader range of matters.

It follows that, quite apart from the fact that any decision to force amalgamations under Division 2A must only be made following a report by the Boundaries Commission or Director-General (or both in some cases), that report would need to have regard to a range of matters that are not dealt with in the IPART Report.

It follows that the IPART Report can neither substitute for the process mandated by Division 2A nor can it be a blueprint for the outcome of such a process.

In particular, the NSW Government’s requirement that ‘scale and capacity’ be met as a threshold criterion for councils could not bind the Boundaries Commission’s assessment in our view.

However, were our argument about the lawfulness of the alternative approach to amalgamations discussed above to be wrong, and if the Government is able to approach the matter in the alternative way, the mandatory scope of the public enquiry is not specified by s263(3) and in this circumstance, the factors and mandatory criteria considered in the IPART Report might well be able to be the focal point of considerations.
Grounds for challenge to decision to proceed with amalgamations

49 In our view, the opportunity to mount a successful challenge to the merits of a decision to proceed with an amalgamation proposed by the Minister is very limited if the procedure mandated by Division 2A is applicable and followed.

50 In general, as there are no merit appeal rights available, a challenge could only succeed if the decision made were so unreasonable that no reasonable Minister could come to the conclusion.

51 And as the Minister’s ultimate decision would inevitably be accepted to be a policy/political decision, the courts would be very reluctant to intervene in our view.

52 The primary grounds on which a Court could intervene would be if there was evidence:

52.1 of the consideration of significant irrelevant matters or a failure to consider a mandatory relevant matters (such as those in s263(3));

52.2 that the decision was made for a collateral or otherwise improper purpose;

52.3 of a failure to afford procedural fairness to affected parties;

52.4 bias by prejudgment.

Relevant considerations

53 In terms of relevant considerations for amalgamations under Division 2A, the matters seem, clearly enough, to be those spelt out in s263(3) of the LG Act.

54 As none of these matters are required to be given any particular weight in preference to others, a decision could rely heavily on certain factors that overlap with those considered in the IPART Report.

55 Nevertheless, if there were evidence that the Minister or the Boundaries Commission slavishly followed the IPART’s conclusions and paid mere lip service to the other matters, there may still be an argument that mandatory relevant considerations have not been properly considered.

Improper purpose

56 In our view, there is nothing intrinsic to FFTF that makes it improper to have regard to those criteria in so far as they fall within the matters required to be considered under s263. Accordingly, we do not see this ground of challenge as a likely basis for a successful challenge.

57 As we have said, were the Minister to act under the alternative powers of dissolution and constitution of areas rather than under Division 2A we think that there would be a reasonable argument that the action is unlawful because it is a use of the power for in improper objective.

58 Any person could bring proceedings in the Land and Environment Court to remedy or restrain such an exercise or threatened or apprehended exercise of power (see s672 and s674 of the LG Act).

Procedural fairness

59 The Courts have held that the Boundaries Commission has an obligation to afford procedural fairness to affected parties in preparing its report on a proposal: Minister for Local Government v South Sydney Council [2002] NSWCA 288. In other words,
affected parties are required to be given the opportunity to make a submission addressing the factors in s263(3) of the LG Act.

**Bias by prejudgement**

60 In this kind of matter, it is also possible that there might be grounds for a challenge were the Minister’s ultimate decision under Division 2A able to be shown to have been affected by a perception of prejudgment.

61 For example, if the Minister’s decision were perceived to have been dictated by the conclusions of a report which assessed the appropriateness of amalgamations against criteria other than those set out in Division 2A, bias by pre-judgment might be able to be established. It would need to be shown that a fair-minded lay observer might reasonably apprehend that the Minister might not bring an impartial mind to the resolution of the question whether amalgamations should proceed. This would be easier to establish were the Minister’s decision contrary to the recommendations of a Boundaries Commission and simply applied the FFTF approach.

**Possible defensive strategy?**

62 Finally, I have been asked to comment on whether the Council could, as a possible defensive strategy, attempt to impede the implementation of a Minister’s proposal by affected council’s putting forward a proposal of their own.

63 In my view, having regard to s218F(3), if two (2) or more affected councils make a proposal for amalgamation prior to the proclamation of another proposal, the Minister is required to refer that proposal to the Boundaries Commissioner or Director-General in the way discussed at paragraph 25 and following above. If so, the requirement to seek the view of electors for that councils’ proposal would apply.

64 However whether or not the councils’ proposal is different to the Minister’s, they are separate proposals. The councils’ proposal would not seem to be a legal impediment to the Minister acting on a report and examination of his own proposal that has been completed even while the councils’ proposal is still the subject of examination and report.

65 Having said that, it does seem to us that if the assessment of a councils’ proposal is still pending, it might make it more difficult - from a political perspective at least - for the Minister to proceed with his own proposal before the results of the other examination and reporting process is completed.

66 We trust this advice is of assistance.

Yours Sincerely,

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APPENDIX

Relevant Provisions of the Local Government Act 1993 with regard to amalgamations

Chapter 9 How are councils established?
...

Part 1 Areas

Division 1 How are areas constituted and dissolved?

204 Constitution of areas

(1) The Governor may, by proclamation, constitute any part of New South Wales as an area.

(2) The area is to have the boundaries determined by the Governor by proclamation.

(3) An area must be a single area of contiguous land.
...

212 Dissolution of areas

(1) The Governor may, by proclamation, dissolve the whole or part of an area.

(2) The Minister may not recommend the making of a proclamation to dissolve the whole or part of an area until after a public inquiry has been held and the Minister has considered the report made as a consequence of the inquiry.

213 Facilitating provisions of proclamations

(1) A proclamation of the Governor for the purposes of this Division may include such provisions as are necessary or convenient for giving effect to the proclamation, including provisions for or with respect to:

• the transfer or apportionment of assets, rights and liabilities
• the transfer of staff
• the application of regulations
• the alteration of ward boundaries
• the holding of elections
• the delivery or retention of records
• the termination, cessation, dissolution or abolition of anything existing before the proclamation takes effect
• the preservation or continuance of anything existing before the proclamation takes effect
• the making of appointments
• the inclusion or exclusion, as a constituent council of any related county council, of the council of any area constituted or dissolved by the proclamation.

Note. If a proclamation for the purposes of this Division transfers staff members (other than senior staff) from the employment of one council to another council, the provisions of Part 6 of Chapter 11 apply in relation to the transferred staff members.
(2) Such a proclamation may:
   (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
   (b) apply differently according to different factors of a specified kind, or
   (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
   or may do any combination of those things.

(3) In this section, related county council, in relation to an area constituted or dissolved by a proclamation of the Governor for the purposes of this Division, means a county council that has an area of operations that includes the whole or any part of the area so constituted or dissolved.

**Division 2A How are areas amalgamated or their boundaries altered?**

**218A Amalgamation of areas**

(1) The Governor may, by proclamation, amalgamate two or more areas into one or more new areas.

(2) On the date specified in the proclamation as the date on which the areas are to be amalgamated:
   (a) the areas are dissolved, and
   (b) the new area or new areas are constituted, and
   (c) subject to section 218C, the councillors of the former areas cease to hold office.

(3) Divisions 1 and 2 apply to a new area constituted by a proclamation under this section in the same way as they apply to an area constituted by a proclamation under section 204.

(4) Section 212 (2) does not apply to the dissolution of a former area by a proclamation under this section.

**218B Alteration of boundaries of areas**

The Governor may, by proclamation, alter the boundaries of one or more areas.

**218C Facilitating provisions of proclamations**

(1) A proclamation of the Governor for the purposes of this Division may include provisions of the same kind as are referred to in section 213.

(2) Such a proclamation may also include provisions for or with respect to:
   (a) the appointment of administrators for any area constituted by the proclamation, and
   (b) the continuation in office, as councillors of any area constituted by the proclamation, of any or all of the councillors of any area dissolved by the proclamation.

Note. If a proclamation for the purposes of this Division transfers staff members (other than senior staff) from the employment of one council to another council, the provisions of Part 6 of Chapter 11 apply in relation to the transferred staff members.

(3) Section 224 (1) does not apply to any councillors who continue in office by virtue of such a proclamation.
218CA  **Maintenance of staff numbers in rural centres**

(1)  This section applies to a council (the transferee council):

   (a) that is constituted as a result of the amalgamation of two or more areas, where the council of one of those areas (the previous council) employed regular staff at a rural centre in the area of the transferee council immediately before the amalgamation took effect, or

   (b) whose geographical area is increased as a result of the alteration of the boundaries of two or more areas, where a council (the previous council) whose geographical area is reduced as a result of the alteration employed regular staff at a rural centre in the area of the transferee council immediately before the alteration took effect.

(2)  The transferee council must ensure that the number of regular staff of the council employed at the rural centre is, as far as is reasonably practicable, maintained at not less than the same level of regular staff as were employed by the previous council at the centre immediately before the amalgamation or alteration of boundaries took effect.

(3)  Subsection (2) does not have effect, or ceases to have effect, in such circumstances (if any) as are prescribed by the regulations.

(4)  In this section:

   regular staff of a council means:

   (a) staff appointed to a position within the organisational structure of the council, otherwise than on a temporary basis, and

   (b) casual staff who are engaged by the council on a regular and systematic basis for a sequence of periods of employment during a period of at least 6 months and who have a reasonable expectation of continuing employment with the council,

but does not include senior staff.

rural centre has the meaning given by section 354B.

**Division 2B What must be done before areas can be amalgamated or their boundaries altered?**

218D  **Exercise of functions under secs 218A and 218B**

A function under section 218A or 218B may be exercised only after a proposal for the exercise of the function is dealt with under this Division.

218E  **Who may initiate a proposal?**

(1)  A proposal may be made by the Minister or it may be made to the Minister by a council affected by the proposal or by an appropriate minimum number of electors.

(2)  An appropriate minimum number of electors is:

   (a) if a proposal applies to the whole of one or more areas, 250 of the enrolled electors for each area or 10 per cent of them, whichever is the greater, or

   (b) if a proposal applies to part only of an area, 250 of the enrolled electors for that part or 10 per cent of them, whichever is the lesser.

218F  **Referral of proposal for examination and report**
(1) On making or receiving a proposal, the Minister must refer it for examination and report to the Boundaries Commission or to the Director-General.

(2) Sections 263, 264 and 265 apply to the examination of a proposal by the Director-General in the same way as they apply to the examination of a proposal by the Boundaries Commission.

(3) For the purpose of examining a joint proposal of 2 or more councils for the amalgamation of two or more areas under section 218A, the Boundaries Commission or Director-General, as the case requires, must seek the views of electors of each of those areas:
   (a) by means of:
       (i) advertised public meetings, and
       (ii) invitations for public submissions, and
       (iii) postal surveys or opinion polls, in which reply-paid questionnaires are distributed to all electors, or
   (b) by means of formal polls.

(4) The period over which the views of electors are to be sought as referred to in subsection (3) must be a period of at least 40 days.

(5) Part 3 of Chapter 4 applies to a formal poll taken by the Boundaries Commission or Director-General in the same way as it applies to a council poll referred to in that Part.

(6) If a proposal that is not supported by one or more of the councils affected by it, or that is an amalgamation proposal, has been referred to the Director-General under subsection (1):
   (a) the Director-General must furnish the Director-General's report to the Boundaries Commission for review and comment, and
   (b) the Boundaries Commission must review the report and send its comments to the Minister.

(7) The Minister may recommend to the Governor that the proposal be implemented:
   (a) with such modifications as arise out of:
       (i) the Boundaries Commission's report, or
       (ii) the Director-General's report (and, if applicable, the Boundaries Commission's comments on that report), and
   (b) with such other modifications as the Minister determines,
       but may not do so if of the opinion that the modifications constitute a new proposal.

(8) The Minister may decline to recommend to the Governor that the proposal be implemented.

Part 3 Local Government Boundaries Commission

260 Constitution of the Boundaries Commission

There is constituted by this Act a body corporate with the name of Local Government Boundaries Commission.

261 Membership of Boundaries Commission
(1) The Boundaries Commission is to consist of 4 commissioners appointed by the Governor.

(2) Of the commissioners:
   (a) one is to be a person nominated by the Minister, and
   (b) one is to be an officer of the Department nominated by the Director-General, and
   (c) 2 are to be persons appointed from the panel constituted under section 262 (1).

(3) Despite subsection (2), the Boundaries Commission is taken to be properly constituted when the commissioners referred to in paragraphs (a) and (b) of that subsection have been appointed.

(4) The commissioner referred to in subsection (2) (a) is the chairperson of the Boundaries Commission.

(5) Schedule 2 has effect with respect to the commissioners and the procedure of the Boundaries Commission.

262 How is a panel to be constituted for the purposes of making an appointment as a commissioner?

(1) There is to be a panel consisting of 8 persons who are councillors nominated by the executive of the Local Government and Shires Association of New South Wales.

(2) The nomination of members of the panel must be made in the manner determined by the Minister. A person must not be nominated as a member of the panel unless he or she has consented in writing to be nominated.

(3) If an insufficient number of nominations have been made to the panel to enable the Governor to appoint a commissioner or commissioners in accordance with this Part, the Governor may appoint a person to be a commissioner on the recommendation of the Minister.

263 Functions of the Boundaries Commission

(1) The Boundaries Commission is required to examine and report on any matter with respect to the boundaries of areas and the areas of operation of county councils which may be referred to it by the Minister.

(2) For the purpose of exercising its functions, the Boundaries Commission:
   (a) may hold an inquiry if the Minister so approves, and
   (b) must hold an inquiry if the Minister so directs,
   but may not hold an inquiry otherwise than as referred to in paragraph (a) or (b).

(2A) Despite subsection (2), the Boundaries Commission must hold an inquiry for the purpose of exercising its functions in relation to a proposal for the amalgamation of two or more areas that has been referred to it in accordance with section 218F.

(2B) Reasonable public notice must be given of the holding of an inquiry under this section.

(3) When considering any matter referred to it that relates to the boundaries of areas or the areas of operations of county councils, the Boundaries Commission is required to have regard to the following factors:
(a) the financial advantages or disadvantages (including the economies or diseconomies of scale) of any relevant proposal to the residents and ratepayers of the areas concerned,

(b) the community of interest and geographic cohesion in the existing areas and in any proposed new area,

(c) the existing historical and traditional values in the existing areas and the impact of change on them,

(d) the attitude of the residents and ratepayers of the areas concerned,

(e) the requirements of the area concerned in relation to elected representation for residents and ratepayers at the local level, the desirable and appropriate relationship between elected representatives and ratepayers and residents and such other matters as it considers relevant in relation to the past and future patterns of elected representation for that area,

(e1) the impact of any relevant proposal on the ability of the councils of the areas concerned to provide adequate, equitable and appropriate services and facilities,

(e2) the impact of any relevant proposal on the employment of the staff by the councils of the areas concerned,

(e3) the impact of any relevant proposal on rural communities in the areas concerned,

(e4) in the case of a proposal for the amalgamation of two or more areas, the desirability (or otherwise) of dividing the resulting area or areas into wards,

(e5) in the case of a proposal for the amalgamation of two or more areas, the need to ensure that the opinions of each of the diverse communities of the resulting area or areas are effectively represented,

(f) such other factors as it considers relevant to the provision of efficient and effective local government in the existing and proposed new areas.

(4) The Boundaries Commission is not entitled to examine or report on any matter relating to the area of operations of a county council constituted or proposed to be constituted for the supply of electricity.

(5) The Boundaries Commission must allow members of the public to attend any inquiry held by the Commission under this section.

(6) The Boundaries Commission may continue with an examination or inquiry even though a commissioner or acting commissioner replaces another commissioner during the course of the examination or inquiry.

(7) The Supreme Court may not make an order in the nature of prohibition in respect of, or an order for removing to the Court or quashing, any decision or proceeding made or conducted by the Boundaries Commission in connection with the exercise of its functions.

264 Can a person be represented in proceedings before the Boundaries Commission?

(1) In proceedings before the Boundaries Commission, a person is not entitled to be represented:
(a) by an Australian lawyer or by a person qualified for admission as an
Australian lawyer, or
(b) by any person acting for a fee or reward.

(2) However, this section does not prevent:

(a) an employee of a person from representing the person before the
Boundaries Commission if the employee is not a person referred to in
subsection (1) (a), or
(b) a person who is the mayor of an area or the chairperson of a county
council from appearing in that capacity in proceedings before that
Commission, or
(c) a person referred to in subsection (1) (a) from preparing any
documents or submissions or tendering any legal advice in
connection with any proceedings before that Commission.

265 Boundaries Commission may conduct survey or poll

(1) To assist it in determining the attitude of the residents and ratepayers of an
area or areas for the purposes of section 263 (3) (d), the Boundaries
Commission may conduct (in such manner as it thinks appropriate) an opinion
survey or poll of the residents and ratepayers.

(2) The residents and ratepayers of the area or areas concerned may participate
in any such opinion survey or poll but are not required to do so.

(3) The Boundaries Commission may request the Electoral Commissioner, a
council or any other person or organisation to conduct any such opinion
survey or poll.

Chapter 13 How are councils made accountable for their actions?

...
(b) on a chairperson of a commission (if the person is one of two or more persons appointed to hold the inquiry and has been appointed as chairperson of the inquiry).

(3) The provisions of section 24 of the Local Court Act 2007 apply to any witness or person summoned by or appearing before the person so appointed in the same way as it applies to witnesses and persons in proceedings under that Act.

(4) The provisions of the Royal Commissions Act 1923 (section 13 and Division 2 of Part 2 excepted) apply, with any necessary adaptations, to and in respect of any inquiry under this section and to and in respect of any witness or person summoned by or appearing before the person or persons holding the inquiry.

(5) The Minister is to cause the report of the person or persons who have held an inquiry under this section to be laid before both Houses of Parliament. If neither House of Parliament is sitting, section 14B of the Royal Commissions Act 1923 applies.

438V Expenses of public inquiry to be borne by council in certain circumstances

(1) The Director-General, on behalf of the State, may recover the reasonable expenses incurred by the State in holding a public inquiry if the inquiry relates to a recurring problem with the administration of a council.

(2) A recurring problem with the administration of a council means any facts or circumstances with respect to the council, its work or its activities that have been the subject of previous Ministerial intervention, and that have continued to exist or have recurred, despite that Ministerial intervention.

(3) In this section, Ministerial intervention means:

(a) the issue of a performance improvement order, or
(b) the temporary suspension of a council under Part 7.

(4) The Director-General may make a determination of the amount of the expenses referred to in subsection (1) and serve a notice on the council requiring the amount so determined be paid in recovery of the expenses.

(5) An amount equal to the expenses as so determined, unless the Director-General otherwise decides, is payable to the Director-General as a debt by the council concerned.

(6) The council may apply to the Civil and Administrative Tribunal for an administrative review under the Administrative Decisions Review Act 1997 of whether any part of the expenses so determined are not reasonable expenses.

(7) The Director-General must give effect to any decision of the Tribunal on an administrative review of the determination of the amount of the expenses.

(8) In this section, expenses incurred in holding a public inquiry include:

(a) remuneration paid to the commissioner or commissioners who hold the public inquiry, and
(b) remuneration paid to staff assisting with the inquiry, and
(c) expenses associated with the attendance of witnesses or other persons at the inquiry.
(9) The Director-General may certify that a public inquiry relates to a recurring problem with the administration of a council and that certificate is sufficient evidence, unless the contrary is proved, that the public inquiry relates to a recurring problem with the administration of the council.

438W Suspension of council during public inquiry

(1) The Minister may, by order published in the Gazette, suspend a council if a public inquiry relating to the council is held or to be held and the Minister considers it in the public interest to suspend the council.

(2) The suspension:

(a) starts on the date appointed by the Minister in the order as the start date for the suspension (being a date no earlier than the date the appointment of one or more commissioners to hold the inquiry takes effect), and

(b) ends when the suspension is terminated or if the council is dismissed.

438X Effect of suspension

(1) During the period in which a council is suspended under this Part, any persons holding civic office in relation to the council are taken also to be suspended from office.

(2) A person, while suspended from civic office under this section:

(a) is not entitled to exercise any of the functions of the civic office, and

(b) is not entitled to any fee or other remuneration, or to the payment of expenses or to the use of any council facilities, to which the person would otherwise be entitled as the holder of the civic office.

438Y Appointment of interim administrator

(1) The Minister must, in an order suspending a council under this Part or by subsequent order published in the Gazette, appoint an administrator of a council that is suspended.

(2) The order is to specify the period for which the administrator is appointed, not exceeding the period during which the council is suspended.

(3) An administrator appointed under this section is an interim administrator.

(4) More than one interim administrator may be appointed under this section (with the same or different functions).

(5) An interim administrator of a council has, during the period of appointment as administrator, all the functions of the council, or, if more than one interim administrator is appointed, the functions of the council specified in the instrument of appointment.

(6) If more than one interim administrator is appointed for a council, the Minister may give directions for the purpose of resolving any issues that arise as a result of there being more than one interim administrator.

(7) An interim administrator must be paid a salary from the council’s funds determined by the Minister.

(8) The Minister may terminate an interim administrator’s appointment at any time.

(9) A reference in this or any other Act, or any statutory instrument, to an administrator of a council includes, unless the context otherwise requires, a reference to an interim administrator.
438Z Termination of suspension

(1) The Minister may, by order published in the Gazette, terminate the suspension of a council under this Part.

(2) The Minister is to terminate the suspension of a council under this Part no later than 30 days after the inquiry report date, unless the council is dismissed on or before that date.

(3) However, a failure to terminate the suspension within that 30-day period does not affect the validity of an order terminating the suspension that is made after that 30-day period.

(4) For the purposes of this section, the inquiry report date is the date the report of the person or persons who held the public inquiry is provided to the Governor or the Minister, as the case requires.

438ZA Ordinary election during suspension period

If an ordinary election of councillors of a council is held during the period in which the council is suspended under this Part, a suspension under this Part:

(a) is taken to continue after that election, even if it would otherwise have ended, and

(b) is taken to end immediately before the first meeting of the council after the election.

438ZB Election of mayor during suspension period

(1) An election of the mayor by councillors is not required to be held during a period in which the council is suspended under this Part.

(2) However, any election that would, but for this section, be required to be held during a period in which the council is suspended must instead be held within 14 days after the suspension ends.

(3) Subsection (2) does not apply if the suspension ends because the council is dismissed or if an ordinary election of councillors is held before the suspension ends.

438ZC Issue of performance improvement orders in response to public inquiry

(1) A performance improvement order may be issued in response to the results of a public inquiry in relation to a council.

(2) For the purposes of this Act, a performance improvement order is taken to be issued in response to the results of a public inquiry if:

(a) a public inquiry in relation to a council is held, and

(b) the performance improvement order specifies, in the reasons why the Minister has decided to issue the order, that it has been issued in response to the results of the public inquiry.

Note. Under section 255, the Minister may, after considering whether the council has complied with the performance improvement order, recommend that the council be dismissed.