

**Shoalhaven City Council Response - IPART Report –
Review of reporting and compliance burdens on Local Government**

Shoalhaven City Council provides the following response to the Draft Recommendations and Findings as outlined in the IPART Report entitled “Review of reporting and compliance burdens on Local Government.

Recommendations to which Council strongly disagrees are the following:

Water and Sewerage

The IPART report states that “While we have identified improvements across a range of obligations, our draft recommendations in the areas of planning and the regulation of Local Water Utilities (LWUs) would bring the greatest improvements in the efficiency of councils.” Shoalhaven City Council does not agree that the draft recommendations 10 and 11 would achieve the improvements stated. IPART have also made the statement that “Our draft recommendations would make LWU regulation consistent with the regulation of other water utilities throughout the State, and address the burdens identified by stakeholders.” Shoalhaven Council does not agree with this statement as the proposed regulatory framework under WICA is not consistent with that of other public water utilities and does not address all of the regulatory activities of LWUs.

IPART has found that the current regulation of LWUs is “overly prescriptive and unnecessarily burdensome. It differs from the outcomes-focused and risk-based regulatory regimes under which public water utilities and private water utilities operate in NSW.” We agree with this finding. However, we do not agree that the draft recommendations 10 and 11 will address the burdens identified by stakeholders in the current LWU regulatory regime nor will they improve water resource planning.

Recommendation 10.

That the Department of Primary Industries Water (DPI Water) undertake central water planning for Local Water Utilities (LWUs) to ensure that water supply and demand options are considered in the context of catchments, replacing the water planning LWUs currently undertake individually through Integrated Water Cycle Management Strategies.

Comment:

IPART has recommended that the state undertake central water planning to allow optimal water resource planning at the catchment level. IPART suggests that will address stakeholder concerns that the current requirements relating to preparation of an Integrated Water Cycle Management (IWCM) Strategy are costly, burdensome, and in some cases, not relevant to a LWU’s operations.

However, we believe that this reflects a misunderstanding about the LWUs issues with IWCM and how water planning is currently undertaken. The principles and concepts embedded into IWCM planning is supported as best practice, it is the methodology imposed by DPI Water that is of concern. The primary issues that Shoalhaven water has with Integrated Water Cycle Management is that DPI Water have made it a prescriptive and dogmatic methodology that has not been an effective tool for Shoalhaven Water. Our water cycle management planning and strategic directions are being implemented successfully in spite of the IWCM process, rather than being driven by it. The process as articulated by DPI Water lacks an understanding of how strategic water cycle planning should be undertaken across different areas with different priorities.

The following is an extract from DPI Water's explanation of what IWCM strategies are to achieve, and how this is to be done:

'Right sizes' any projects and identifies the best-value 30-year IWCM scenario and Strategy on a TBL basis

It includes a 30-year Total Asset Management Plan and Financial Plan

It identifies the lowest uniform level of stable typical residential bills (TRBs) to meet the levels of service negotiated with the community and the price path for the next 4 years in current dollars.

It includes an update of the existing 30-year renewals plan, with only proven evidence based renewals included for the first 5 years. The renewals plan takes account of any avoided, re-sized, abandoned or re-prioritised works.

An IWCM Strategy is prepared every 8 years.

NSW Office of Water concurrence is needed to the IWCM Issues Paper, final IWCM Strategy and scenario and the Financial Plan prior to LWU implementation of the scenario.

It is suggested that IPART has misinterpreted what DPI Water are requiring LWUs to do. IPART's interpretation (we believe) is that the IWCM prescribed for each utility by DPI Water is equivalent to the Metro Water Plan or the Lower Hunter Water Plan. Clearly this is not the case when you look at the purpose of the Lower Hunter Water Plan as follows and compare it with the requirements given above.

The Lower Hunter Water Plan has been developed to make sure the people of the lower Hunter have enough water to meet their needs for the medium term, including being able to withstand a drought much more severe than previously recorded in the region.

The plan is also concerned with protecting the health of the river systems in the region that are impacted by the water supply system. Modelling for the plan includes proposed refinements to environmental flow rules to better mimic natural conditions. These will be implemented through the water sharing plans and water licences managed by the NSW Office of Water.

The Lower Hunter Water Plan sets out the mix of supply and demand measures that will:

- provide water security during drought*
- ensure reliable water supplies to meet growing water demand due to a growing population and increased business and industry activity*
- help protect aquatic ecosystems*
- maximise net benefits to the community.*

The Lower Hunter Water Plan is a 70 page document, compare this with Eurobodalla's 244 page IWCM, the first of the IWCMs to be prescribed and approved by DPI Water.

It is perplexing as to how IPART have concluded that DPI Water could have the knowledge, understanding and capacity to provide planning for the whole state equivalent to that which local water utilities currently undertake. It appears that this recommendation is more about a major reform process across the water sector in regional NSW rather than the cutting of red tape in local government. The question of responsibility for funding of both planning and

implementation of infrastructure works in a more centralised model has also not been addressed.

In the case of Shoalhaven, some of our water planning is already linked into the Metropolitan Water Plan (MWP), and DPI Water have carriage of this Plan. Council is a stakeholder in the consultation process for this plan. The latest plan is now 2 years behind schedule. It is difficult to imagine from a logistics perspective how DPI Water could develop new planning proposals for the whole state in any reasonable time frame and with clear and logical methodologies for prioritising catchments. Local based planning allows the LWU to set priorities based on local settings and knowledge and in a timeframe that is transparent to affected communities through the IPR process. For example, the Shoalhaven LWU supply side includes not only issues related to the MWP but also other sources such as Porters Creek dam in the southern Shoalhaven. The critical nature of this dam from a supply side led Council to upgrade the dam and this \$14M project is being fully funded by Council.

A simpler, more efficient and cost effective method of reducing this identified issue is to modify the DPI Water IWCM methodology in such a way that allows different areas to address their key planning issues in a less prescriptive manner.

In the case of Shoalhaven, some of our water planning is already linked into the Metropolitan Water Plan (MWP), and DPI Water have carriage of this Plan. Council is a stakeholder in the consultation process for this plan. The latest plan is now 2 years behind schedule. It is difficult to imagine from a logistics perspective how DPI Water could develop new planning proposals for the whole state in any reasonable time frame and with clear and logical methodologies for prioritising catchments. Local based planning allows the LWU to set priorities based on local settings and knowledge and in a timeframe that is transparent to effected communities through the IPR process. For example, the Shoalhaven LWU supply side includes not only issues related to the MWP but also other sources such as Porters Creek dam in the southern Shoalhaven. The critical nature of this dam from a supply side led Council to upgrade the dam and this \$14M project is being fully funded by Council.

A simpler, more efficient and cost effective method of reducing this identified issue is to modify the DPI Water IWCM methodology in such a way that allows different areas to address their key planning issues in a less prescriptive manner.

Shoalhaven City Council therefore objects to Recommendation 10 in the strongest terms.

Recommendation 11.

That the NSW Government enable LWUs with sufficient capacity to be regulated under the Water Industry Competition Act 2006 as an alternative to their current regulation under the Best-Practice Management of Water Supply and Sewerage Framework and section 60 of the Local Government Act 1993.

Comment :

Operating under WICA is a very different regulatory regime to which Local Water Utilities currently operate. IPART are suggesting that this is a way to “tailor the regulatory framework for LWUs to reflect the capacity of each utility”. This outcome principle is supported in concept, but the recommendation of a “WICA solution” is a strange and illogical suggestion. There is no quantitative basis upon which such a recommendation can be made, and from the information available on the current operation of WICA, we would conclude that this is a totally inappropriate regulatory mechanism for LWUs. IPART has referenced the 2006 version of the WIC Act. It should be noted that the intent and use of this Act has been for private sector operators entering into areas historically serviced by monopoly utilities.

The latest review and amendments (Water Industry Competition Amendment (Review) Act 2014 specifically excludes “water industry infrastructure within the area of operations of a public water utility...” Even though this amendment legislation was gazetted in 2014, the updated regulation has not yet been drafted making it difficult to understand any detailed implications.

It is of concern that all of the previous work done to highlight and address the water and sewer provisions of the Local Government Act under the State Government LGA review has apparently been overlooked. There is no discussion of what could be achieved through the current Local Government Act changes that are under consideration by the government (and we are not a party to what changes have been proposed for the water and sewer components).

It could be seen as a conflict of interest for IPART to be recommending that the regulatory responsibilities for Local Water Utilities be transferred from DPI Water to IPART.

Shoalhaven City Council therefore objects to Recommendation 11 in the strongest terms.

In general, Shoalhaven City Council supports the remaining Draft Recommendations and findings in principle, and is of the opinion that the recommendations could be of benefit to both Council and the Community. In addition to that support, the following specific supplementary comments are provided in relation to the recommendations:

Systemic issues

Recommendation 2.

That the NSW Government maintain a Register of local government reporting, planning and compliance obligations that should be used by State agencies in the regulation-making process to manage the volume of regulatory requirements imposed on councils and to avoid creating unnecessary or duplicative requirements.

Comment:

This recommendation is supported and it is suggested that the register be also made available to Councils, who each individually spend time and resources tracking and monitoring compliance and regulatory obligations.

Recommendation 3.

That the NSW Government remove restrictions on fees for statutory approvals and inspections to allow for the recovery of efficient costs, subject to monitoring and benchmarking.

Comment:

It is unclear if this covers s149 Certificates issued by Council but they should be considered in this regard.

Recommendation 4.

Where fees continue to be set by statute, that the relevant NSW Government agency reviews the level of the fees every 3-5 years and amends the relevant legislation to allow these fees to increase annually in line with CPI or an index of fee-related costs.

Comment :

Council agrees with this recommendation, as the current situation is that some fees don't change for many years and hence don't keep up with increasing costs.

It is unclear if this covers s149 Certificates issued by Council but they should be considered in this regard.

Recommendation 5.

That if statutory fees are capped below cost recovery to ensure affordability or for other policy reasons, then the NSW Government should reimburse councils for the shortfall in efficient costs.

Comment:

Council agrees entirely with this recommendation and considers that this should work similarly to the pensioner subsidy from the Commonwealth Government to allow Councils to recover the full cost of the service where they are restricted in charging full cost recovery.

It is unclear if this covers s149 Certificates issued by Council but they should be considered in this regard.

Recommendation 6.

That the Department of Premier and Cabinet amend the Good Practice Guide to Grant Administration, to:

- *recognise Local Government as separate from non-government organisations*
- *remove acquittal requirements for untied grants*
- *explicitly address ongoing maintenance and renewal costs when funding new capital projects*
- *require Agencies to rely on existing council reporting to assess financial stability and management performance of councils*
- *lengthen acquittal periods for ongoing grant programs to four years, and use Memorandum of Understanding (MOU) arrangements, rather than requiring councils to reapply annually, and*
- *provide for a streamlined acquittal process for grants of less than \$20,000 in total, examples of streamlining include:*
 - o *not requiring further external financial audit*
 - o *using risk-based controls and requirements,*
 - o *confining performance measurement to outcomes consistent with the purpose of the grant.*

Comment:

Council considers that all of these recommendations are valid. In addition to these consistency of accounting treatment should also be addressed - some grants are provided inclusive of GST and some are exclusive of GST, given that they are a cash injection they should be GST exclusive.

Recommendation 9.

That the Department of Planning and Environment, including through the Office of Local Government, review public notice print media requirements in the Local Government Act 1993, the Local Government (General) Regulation 2005, the Environmental Planning and Assessment Act 1979, and the Environmental Planning and Assessment Regulation 2000 and, where the cost to councils of using print media exceeds the benefit to the community, remove print media requirements and allow online advertising, mail-outs and other forms of communication as alternatives.

Comment:

This requirement could certainly improve communication opportunities and reduce the cost burden of advertising on Council. It will allow for more effective methods to be utilised and will reduce the often unnecessary/or less effective requirement for print media. It recognises the change in readership of print media and the movement of communications into the digital space. The proposal is supported.

Council consistently runs public notices for a range of planning matters (e.g. LEPs and DCPs) in local papers which costs on average \$450 and often this cost is doubled as Shoalhaven has a northern and a southern local paper given the size of the LGA. Very few enquiries are received from community members who have read an ad in the local paper for a planning proposal. People are more likely to become aware of a planning matter via Council's website or through direct notification via letter or email.

Should this change be implemented it is recommended that clear guidance on the governments interpretation of cost v benefit is provided. It will also need to be determined as part of any benefit analysis whether alternative methods of communication will reach disadvantaged residents. However, it is noted that the proposal is simply an alternative option to traditional methods and does not preclude the use of print media in particular circumstances.

Planning

Recommendation 15.

That the Department of Planning and Environment (DPE):

- *Implement a data sharing model with the Australian Bureau of Statistics in relation to building approvals in NSW.*
- *Introduce a consolidated data request of councils for the purposes of the Local Development Performance Monitoring (LDPM), Housing Monitor, State Environmental Planning Policy (Affordable Rental Housing) 2009 (Affordable Rental Housing) and State Environmental Planning Policy No 1 – Development Standards (SEPP 1 variations).*
- *Fund an upgrade of councils' software systems to automate the collection of data from councils for the purposes of the LDPM, Housing Monitor, Affordable Rental Housing and SEPP 1 variations.*
- *Publish the data collected from councils on Affordable Rental Housing and SEPP 1 variations data.*
- *Seek agreement with the Land & Environment Court to obtain appeal data directly from the Court.*
- *Remove the administrative requirement for councils to report to DPE on political donations or gifts under section 147 of the Environmental Planning & Assessment Act 1979.*

Comment :

Council agrees, particularly in relation to the funding to upgrade Council's systems to automate the collection of data. Technical support for Councils will also be required for those upgrades.

Recommendation 16.

That the Environmental Planning and Assessment Act 1979 be amended to enable zoning and development standards information under section 149(2) of the Environmental Planning and Assessment Act 1979 to be provided through the NSW Planning Portal.

Comment:

More information is required on how this would occur. If it is intended that an application can be lodged and fees paid through the Portal, and Council processes the certificate, then this recommendation is supported. If not, then see response to Recommendation 18 below.

Recommendation 17.

That the Environmental Planning and Assessment Regulation 2000 be amended to specify the information that can be provided by councils in accordance with section 149(5) of the Environmental Planning & Assessment Act 1979.

Comment:

Shoalhaven City Council agrees with this recommendation and is of the opinion that the State government should set minimum information to be included but Councils should also be able to include any additional information that Council considers important. The State Government should consider consolidating the planning certificates so that there is just one certificate that contains all the relevant information that a potential purchaser or a landowner should be aware of.

Recommendation 18.

That DPE amend the NSW Planning Portal to provide for online:

- *payment of fees and charges by applicants and for the Planning Reform Fund fee to then be automatically directed to DPE*
- *zoning and development standards information under section 149(2) of the Environmental Planning & Assessment Act 1979*
- *joint applications for development approvals and construction certificates, and*
- *information under section 149(5) of the Environmental Planning & Assessment Act 1979 to be accessible via a link to council websites.*

Comment:

Council is concerned with information under section 149(2) and (5) being made available online. Council is not confident the information contained in Council's GIS is accurate and up to date for the 65,000 plus properties in Shoalhaven.

Currently, each certificate is checked and signed off by a planner. Errors and anomalies are then identified and corrected prior to the certificate being issued. If the process were to be automated online, Council would seek to have a disclaimer about the accuracy of the information which then would detract from community confidence in the information provided.

State Government should provide funding and technical support for Councils to improve their systems and the quality of their data.

Recommendation 19.

That DPE manage referrals to State agencies through a 'one-stop shop' in relation to:

- *planning proposals (LEPs)*
- *development applications (DAs), and*
- *integrated development assessments (IDAs).*

Comment:

This has been a frustration for Councils and it would be helpful to have a co-ordinated response to referrals to ensure that comments are not conflicting and more importantly to ensure timely responses.

- This centralised approach has merit however it will place an administrative strain on the State. Adequate resourcing needs to be in place to ensure the time distribution and receipt of referrals. Emphasis on electronic transmittal of documents or access to Council's documents via websites as Civica's DA Tracking will need to be investigated and pursued to enhance timely referrals and responses. A consistent approach will be required. Noting the number of Councils and different levels of technical support, this may be an issue.
- Method of payment needs to be considered. Electronic payment should be pursued.
- The number of referrals with regard to concurrences, integrated approvals needs to be considered with a view to minimising them as far as practicable.

This centralisation will not negate the need for Councils to liaise with the approval / referral agencies but could potentially add another step to the process as well as cost and delays if not managed well.

Recommendation 20.

That DPE develop suites of standardised development consent conditions and streamline conditions that require consultant reports or subsequent approvals, in consultation with councils, State government agencies and other key stakeholders.

Comment:

Shoalhaven City Council has no objection to the standardisation of conditions of consent.

However, there will always be a need to address particular special situations /scenarios / issues. Standardisation would facilitate a consistent approach within each Council but also across the State thus increasing clarity and consistency which would have compliance benefits as well.

Shoalhaven Council is part way through a review of its standard conditions and this information could be made available upon request.

Administration and governance

Recommendation 21.

That the NSW Government streamline the reporting requirements for the Integrated Planning and Reporting (IP&R) framework in the revised Local Government Act.

Comment:

In principle support is provided for this recommendation. However, more information is required to explain what is meant by 'streamline'. The draft report is not entirely clear on which IP&R reports is intended to be streamlined and how this should occur.

It is certainly supported that existing duplication is removed, for example the need for an Annual Report and an End of Term report in the same year.

The State of Environment Report could also be incorporated into the Annual Report. The SoE report should also form part of the End of Term report.

There are certainly opportunities for streamlining the reporting requirements however improved clarification on the objectives of this recommendation is required.

Recommendation 22.

Ahead of the next IP&R cycle (2016), that the Office of Local Government:

- *provide councils with a common set of performance indicators to measure performance within the IP&R framework*
- *conduct state-wide community satisfaction surveys and release the results to allow comparisons between councils and benchmarking*
- *provide guidance to councils on the form and content of the End of Term Report and its relationship to local councils' Annual Reports*
- *clarify for councils the purpose, form and content of the State of the Environment report and clarify its relationship to the End of Term Report*
- *work with the Office of Environment and Heritage, the NSW Environment Protection Authority and other relevant agencies to develop performance indicators for councils to use, and*
- *where relevant, amend the IP&R Guidelines and Manual to incorporate this material.*

Comment:

A common set of performance measures would be very useful, although previous attempts to develop common indicators has not been overly successful. Compliance burdens would increase if the indicators did not allow easy access to data sources.

The term 'within the IP&R Framework' is too broad and needs to be defined.

It is agreed that a state-wide community satisfaction survey would reduce Councils reporting burden, however, cost to council and survey timing would need to be addressed

Greater guidance on End of Term report and its relationship to the Annual Report is required and improved clarification between the State of the Environment report and End of Term report is also needed. This recommendation is supported.

An agreed set of indicators relating to environmental issues would be a positive step for councils. However, data for the indicators should be readily available

Agree the IPR Guideline and Manual should be amended to incorporate these changes.

Recommendation 23.

That the Office of Local Government remove requirements for councils to report more in the General Purpose Financial Statements than is required by the Australian accounting standards, issued by the Australian Accounting Standards Board, except for requirements which are unique and high value to local government such as Note 21 and Special Schedule 7.

Comment :

This recommendation is valid and will assist with simplification of year end reporting.

Recommendation 24.

That clause 163(2) of the Local Government (General) Regulation 2005 be amended to allow the Office of Local Government to determine the councils for which the threshold for formal tendering would be increased to \$250,000, with this threshold to be reviewed every five years.

Comment:

Council is in general supportive this recommendation but is unsure of the criteria which would be applied by the Office of Local Government to determine which Councils could work with the increased threshold. It is also considered that this recommendation could be amended or added to, to support the formal tendering through Joint Organisations.

Recommendation 31.

That section 31 of the Public Interest Disclosures Act 1994 be amended to require councils to report on public interest disclosures in their annual reports and remove the requirement for an annual public interest disclosures report to be provided to the Minister for Local Government.

Comment:

Council is already reporting basic Public Interest Disclosure data in its Annual Report. There should be no need to provide a second report. The recommendation is supported.

Recommendation 35.

That the Building Professionals Board or the proposed Office of Building Regulation (in consultation with Department of Planning and Environment, Fire & Rescue NSW and local government) design the new online system for submitting annual fire safety statements (AFSS) to allow councils to identify buildings in their area that require an AFSS, and where follow up or enforcement action is required.

Comment:

Shoalhaven City Council supports the proposal in principle. It is important for this information to be stored for ready access to the NSW Fire & Rescue and Councils. The system would need to be broad to also include fire safety auditing and a complaints system to alert both Council and the Brigades on potentially fire hazardous conditions. Concern would be raised on the ability of the system to send out reminder letters and allow for fire safety audits of sites. Many Council's already have this in operation and the new system will need to support seamless transitions.

Public land and infrastructure

Recommendation 38.

That the NSW Government transfer Crown reserves with local interests to councils, as recommended by the NSW Crown Lands Management Review and piloted through the Local Land Program Pilot.

Comment:

The report makes no mention of the dual role of the Local Government Act and the Environmental Planning and Assessment Act in reclassifying community land to operational land.

At present, it requires an amendment to an LEP under the EP&A Act but specific requirements are contained in the LG Act. Consideration should also be given to allowing Councils discretion as to when an independently chaired public hearing is required. For example, if no submissions are received during the public exhibition of a proposed reclassification, Council should not have to go to the expense of hiring an independent person to chair a public hearing that is likely to have no attendees. This has been the situation a number of times for Shoalhaven City Council.

Council is currently dealing with a situation where land was reclassified from community to operational through the LEP but erroneously the interests were not removed from the properties. To rectify this issue, Council went through a separate planning proposal process (including a public hearing) only to be told by State Government that the LEP amendment could not be notified as the land should have been reclassified back to community land prior to commencing the planning proposal. Council is now faced with redoing the planning proposal process, including a further public hearing. Council would have appreciated being advised of this issue prior to commencing the planning proposal rather than at the end of the process as significant resources and staff time have been expended in a wasted process. This also impacts on the community's confidence in Council.

Recommendation 42.

That the NSW Government streamline the provisions of the Local Government Act 1993 relating to plans of management for community land to align public notice and consultation with councils' community engagement for Integrated Planning and Reporting purposes.

Comment:

Alignment of provisions of the *Local Government Act 1993* relating to plans of management for community land to align public notice and consultation with councils' community engagement is welcomed.

In addition, standard/generic plan of management provisions/ actions for community management land would significantly reduce the requirements of local government to provide and maintain its own plans of managements and achieve a consistent state wide approach.

There is a need to streamline and reduce the Plan of Management process and for standardisation of Plans of Management to occur but it is concluded this may not be achieved through the recommendation provided within the IPART report. The comments (received from councils) contained within the IPART report supporting the recommendation state that the requirements for Plans of Management should be removed and that Plans of Management are no longer required. The suggestion to link only the community engagement component of Plans of Management to IP&R does not go far enough to improve the burden of Plans of Management on Council.

Further clarification is required regarding the intentions of the recommendations and how this would actually work in practice. Questions should be raised as to whether this recommendation was the intention of any of the councils that provided comment.

There would be concern that detailed, complex or controversial parcels of land could hold up or derail the IP&R process. In some cases the detail provided within the Plans of Management for some sites may not be easily conveyed through the IP&R engagement process and may warrant individual engagement.

Certainly the engagement processes could be linked however the Plans of Management requirements would have to be significantly standardised and clear guidance provided on managing the process within the IP&R framework would be required.

Also provisions of the Local Government Act 1993 should also be consistent with relevant State Environment Planning Policies (i.e. Infrastructure SEPP)

Shoalhaven City Council would be happy to provide additional comment and clarification to the points raised in this submission. For further information, please contact Council's Governance Manager, Sara McMahon on (02) 4229 3268.