

## **TERMS OF REFERENCE — REVIEW OF ESSENTIAL SERVICES COMMISSION'S PROCESS AND APPROACH FOR CONSIDERING COUNCIL HIGHER CAP APPLICATIONS FOR 2016-17**

### **PURPOSE**

2016 was the first year that the Commission assessed higher cap applications from Victorian councils under the Fair Go Rate System (FGRS). The FGRS is new to both councils and the Commission and it is important that we take the opportunity to review our process and approach to identify where improvements can be made and support the delivery of FGRS' intended outcomes.

The findings from the review will assist the Commission plan and prepare for future higher cap applications from councils.

### **BACKGROUND**

Under the *Fair Go Rates System* (FGRS) the Minister for Local Government sets a rate cap each year that specifies the maximum percentage increase in councils' average rates and charges (defined in the legislation) for the forthcoming financial year. The Minister has the capacity to set a cap that applies to all councils, a group of councils or a single council.

In circumstances where a council considers that the rate cap is insufficient for its needs, it can apply to the Essential Services Commission for a higher cap. In seeking a higher cap, councils are required to address the following legislative matters:

- the proposed higher cap and the specified year(s) that it will apply
- the reasons for which the council seeks the higher cap
- how the views of ratepayers and the community have been taken into account in proposing the higher cap
- how the higher cap is an efficient use of council resources and represents value for money

- whether consideration has been given to reprioritising proposed expenditures and alternative funding options and why the council does not consider those options to be adequate, and
- that the assumptions and proposals in the application are consistent with the council's long term strategy and financial management policies set out in the council's planning documents and annual budget.

In considering an application the Commission is required to have regard to the above legislative matters and the objectives of the FGRS:

- to promote the long-term interests of ratepayers and the community in relation to sustainable outcomes in the delivery of services and critical infrastructure, and
- to ensure that a council has the financial capacity to perform its duties and functions and exercise its powers.

The Commission received 10 higher cap applications from councils for 2016-17. One council subsequently withdrew its application. The Commission released its nine decisions and an overview paper on 31 May 2016.

## **SCOPE OF THE REVIEW**

The review should consider the process and approach used by the Commission in assessing higher cap applications for 2016-17 and identify improvements. In particular, the review should consider the:

- usefulness and usability of the Commission's Guidance material (including baseline templates) provided to councils to assist in the preparation of their applications
- interactions between the Commission and councils before and during the application process (including the Commission's request for information)
- workability of the timelines in the application process
- burden (cost and time) placed on councils seeking a higher cap including the drivers of those costs
- approach taken by councils in preparing their applications and responding to the Commission's information requests, including any best practice that could be shared with sector

- relevance of the information sought by the Commission in making its decisions
- approach adopted by the Commission in assessing whether a higher cap was appropriate
- clarity of the Commission's final decisions.

In developing and evaluating options to improve the Commission's process and approach the review should have regard to the:

- legislative requirements imposed on councils through the *Local Government Act 1989* (including to develop a council plan and a strategic resource plan, follow best value principles and implement principles of sound financial management)
- legislative requirements imposed on the Commission through the *Local Government Act 1989* and the *Essential Services Commission Act 2001*, and
- timelines set out in the Local Government Act for making applications and preparing and consulting on budgets.

The review is not intended to cover matters of policy regarding the FGRS framework or the likely outcomes of the higher cap decisions. Rather, the review is to assess whether the Essential Services Commission has fulfilled its obligations as effectively as possible.

## **REVIEW PROCESS**

The review will be undertaken independently by Mr Peter Brown. Mr Brown will commence the review before the end of July and will provide a report to the Commission within one month. The findings from the review will embody the independent judgements of its author.

The review should draw on the views of councils (especially those that made an application), local government sector peak bodies (for example, Victorian Local Governance Association and Municipal Association Victoria and LGPro), ratepayer associations and Local Government Victoria.

The views expressed by the reviewer will be independent of the Commission and a report setting out the findings from the review will be made public within a month of its finalisation.