

SEPARATE ATTACHMENT

6.2.5

A New Local Government Act for NSW
– Discussion Paper





LOCAL GOVERNMENT ACTS TASKFORCE

A NEW LOCAL GOVERNMENT ACT FOR NSW

DISCUSSION PAPER



4 April 2013

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EXECUTIVE SUMMARY

Background and Scope

The Local Government Acts Taskforce (the Taskforce) has been appointed by the Minister for Local Government, The Hon Don Page to re-write the *Local Government Act 1993* and review the *City of Sydney Act 1988*. The Taskforce membership and Terms of Reference can be found in section 1.2.

This review is being conducted in the context of a number of other significant reviews (listed in section 1.5), and especially that of the Independent Local Government Review Panel (the Independent Panel). Under their Terms of Reference, the Taskforce has to have regard to the work of the Independent Panel and any of its recommendations that are adopted by the Government. The Independent Panel is scheduled to report in July 2013. Consequently, there are a number of matters that the Taskforce is unable to address until the decision of Government is available in relation to the Independent Panel recommendations. These are noted throughout this Discussion Paper.

Purpose and Approach

The purpose of this Discussion Paper is to outline the deliberations of the Taskforce on options and proposals for the principles of the new legislation. The Taskforce is proposing to develop a flexible, principles-based legislative framework where possible that avoids excessive prescription, is written in plain language, and in a logical form. The approach proposed by the Taskforce to the new legislation is detailed in section 1.3.

In conducting this review the Taskforce is required to consult widely. Many of the proposals contained in this paper have been formulated on the basis of feedback and submissions received by the Taskforce in response to its Preliminary Ideas Paper, October 2012. A summary of the feedback received can be found in Chapter 2 and Appendix I.

Following the release of this paper the Taskforce will be conducting further consultation, including holding workshops and inviting written submissions. All interested organisations and persons are encouraged to comment on the proposals outlined in this paper. See section 5.1 for details on how to make a submission.

Elements of a New Local Government Act

This Discussion Paper explores matters that in the view of the Taskforce are the key elements of a new Local Government Act (the Act) and puts forward proposals for comment on how these elements might be accommodated. A summary of all proposals can be found in Table II at the end of the Executive Summary.

The Taskforce has the view that Integrated Planning and Reporting (IPR) should form the central theme for the new Act and be the primary strategic tool that supports councils delivering services and facilities to their communities.

The Taskforce proposes that in addition to elevating IPR to form the central plank of the new Act, the other provisions of the Act should be drafted to better utilise IPR. The elevation of IPR should allow the Act to be streamlined and made more consistent. This can be achieved by consolidation of duplicated requirements and ensuring other provisions of the Act reflect the roles and responsibilities of the council, councillors, mayor, general manager and staff as framed by IPR. See section 3.2.1 for details.

The Taskforce acknowledges the importance of defining the role of local government and principles to be observed by local government in fulfilling this role. Accordingly, the Taskforce proposes a redrafting of the current Charter (s8 of the Act) to be replaced with new Roles and Principles for local government. This will reflect local government as part of a broader governance system working strategically, and in partnership, to deliver improved outcomes for communities. The proposed draft Roles and Principles can be found in section 3.1.2.

The Taskforce has the view it is essential the new Act recognises the importance of technology as a mechanism councils can use to connect with their communities and more efficiently and effectively deliver services. The Taskforce proposes that as a general principle the Act should support the optimal and innovative use of technology by councils, while ensuring this does not result in reduction of access to council. See section 3.2.3 for specific proposals on this matter.

As the principal element of the governance framework for local government in NSW, the Taskforce acknowledges the importance of ensuring the Act provides a strong framework which facilitates councils acting fairly, responsibly, ethically and in the public interest. In this paper the Taskforce has endeavoured to address the main elements of this framework. These matters are explored in Chapter 3, Part III of this paper and cover the topics listed in Table I.

Table I – List of Topics considered in this paper

Topic	See Section
Elections	3.3.1
Meetings	3.3.2
Appointment and Management of Staff	3.3.3
Formation and Involvement in Corporations and Other Entities	3.3.4
Protection from Liability	3.3.5
Code of Conduct	3.3.6
Pecuniary Interest	3.3.7
Delegations	3.3.8
Financial Management	3.3.9
Procurement	3.3.10
Capital Expenditure Framework	3.3.11
Public Private Partnerships	3.3.12
Acquisition of Land	3.3.13
Public Land	3.3.14
Approvals, Orders and Enforcement	3.3.15
Water Management	3.3.16
Tribunals and Commissions	3.3.17
Performance of Local Government	3.3.18

City of Sydney Act

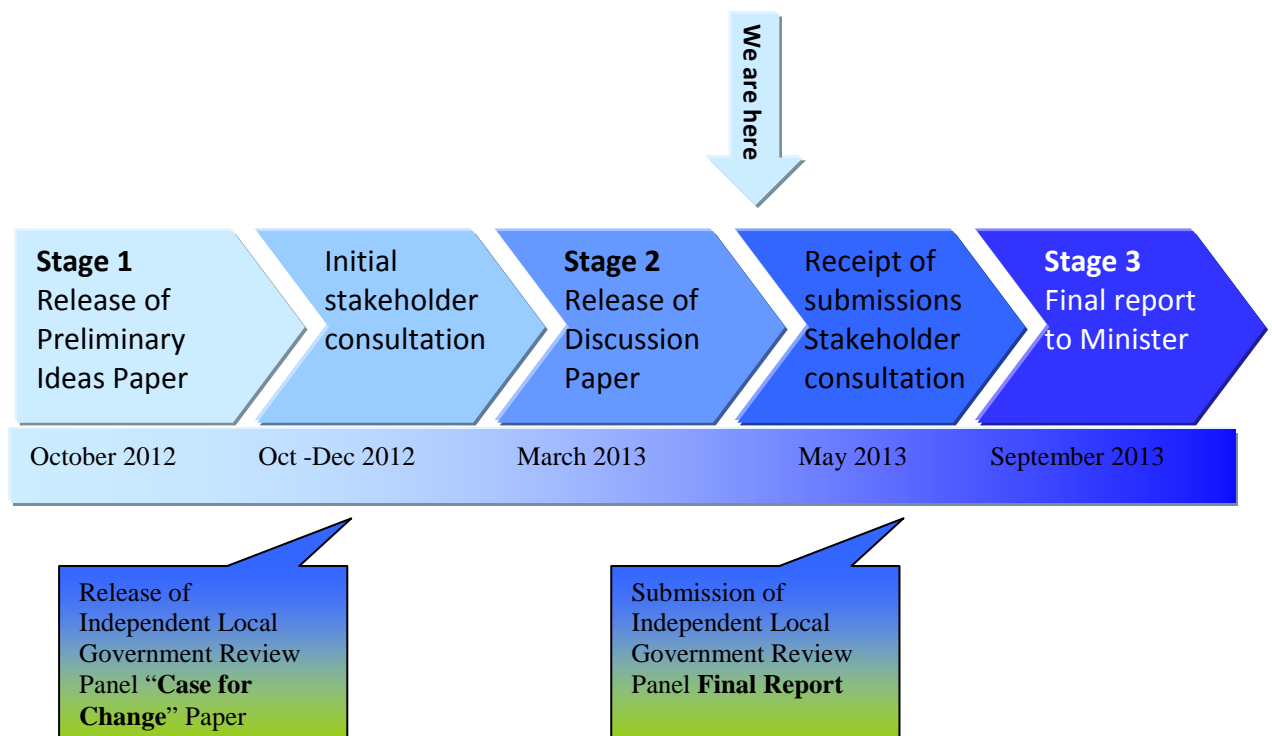
The Taskforce has also been requested to review the *City of Sydney Act 1988*. This Act provides special provisions unique to the City as the centre of government and business in NSW. In most other respects the Local Government Act applies. The main purposes of the City of Sydney Act are to make provisions for the non-residential voting franchise for the City; establish the Central Sydney Planning Committee and the Central Sydney Traffic and Transport Committee; and make provision for special environmental planning powers.

Having considered the submissions and the findings of the 2010 Independent Review of the Central Sydney Planning Committee, the Taskforce considers that under the current boundary arrangements there is a need to retain a separate City of Sydney Act in recognition of the importance of the City of Sydney as a global city; the economic importance of the central business district of the City; and its unique position in holding events of local, regional, national and international significance. Details of the Taskforce's considerations and proposal can be found in Chapter 4.

Next Steps

The release of this Discussion Paper marks the second stage of the work of the Taskforce which will include further consultation with all interested stakeholders. Submissions are invited in response to this paper. Details on how to make submissions are contained in Chapter 5. The closing date for submissions is **COB Friday 28 June 2013**.

Thereafter, a final report, based on the outcomes of the consultation and outcomes of other reviews including the Independent Panel, containing recommendations for a new Local Government Act, will be prepared for the consideration of the Minister for Local Government.



More details on the Taskforce can be found on [webpage](#):

http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_LGAT.asp?mi=10&ml=2&SecHd=HOME&AreaIndex=TASKFORCE

Table II - Summary of Taskforce Proposals

Topic	Proposal No	Taskforce Proposals
Approach and Principles for the Development of the New Act	1.3	<p>The Taskforce proposes:</p> <ul style="list-style-type: none"> (i) a flexible, principles based legislative framework, avoiding excessive prescription, written in plain language and in a logical form. The new Act should be confined to setting out the principles of how councils are established and operate. When further detail or explanation is required as to how these principles are to be achieved then regulations, codes and guidelines will be used where appropriate. (ii) a more consistent approach be taken to the use and naming of the regulatory and other instruments, noting that there is inconsistent use of mandatory and discretionary codes, section 23A guidelines, practice notes, discretionary guidelines and the like.
Purposes of the Local Government Act	3.1.1	<ul style="list-style-type: none"> (i) The Taskforce proposes the following draft Purposes of the Act “The purpose of this Act is to provide <ul style="list-style-type: none"> (1) a legal framework for the NSW system of local government in accordance with section 51 of the <i>Constitution Act 1902 (NSW)</i> (2) the nature and extent of the responsibilities and powers of local government (3) a system of local government that is accountable, effective, efficient and sustainable.”
Role and Principles of Local Government	3.1.2	<ul style="list-style-type: none"> (i) The Taskforce proposes the inclusion of a new Role of Local Government and a set of Principles for Local Government that will replace the charter in the new Act as follows: “Role of Local Government The role of local government is to lead local communities to achieve social, economic and environmental well being through: <ul style="list-style-type: none"> i) utilising integrated strategic planning ii) working in partnership with the community, other councils, State and Commonwealth governments to achieve outcomes based on community priority as established through Integrated Planning and Reporting iii) providing and procuring effective, efficient and economic infrastructure, services and regulation iv) exercising democratic local leadership and inclusive decision-making Principles of Local Government Principles to be observed by local government are to: <ul style="list-style-type: none"> i) provide community-based representative democracy with open, unbiased and accountable government ii) engage with and respond to the needs and interests of individuals and diverse community groups iii) facilitate sustainable, responsible management, development, protection and conservation of the natural and built environment; iv) diligently address risk and long-term sustainability; v) achieve and maintain best practice public governance and administration, and to act fairly, responsibly, ethically, and in the public interest; and vi) optimise technology, and foster innovation and flexibility.”
Integrated Planning and Reporting	3.2.1	<p>The Taskforce proposes that:</p> <ul style="list-style-type: none"> (i) IPR be elevated to form a central ‘plank’ of the new Act as the primary strategic tool to enable councils to fulfil their leadership role and deliver infrastructure, services and regulation based on community priorities identified by working in partnership with the community, other councils and the State Government. (ii) other provisions of the Act be drafted so as to better support IPR including accountability to the community, financial sustainability and partnership with the State and others to deliver community outcomes. (iii) where possible relevant provisions from other sections of the Act be incorporated into IPR to reduce duplication. For example, capital

Topic	Proposal No	Taskforce Proposals
		<p>planning and expenditure approval provisions could be moved to the IPR resourcing strategy provisions; and community consultation processes should reflect IPR community engagement principles and need not be repeated throughout the Act.</p> <p>(iv) the IPR provisions be simplified to increase flexibility for council to deliver IPR in a way that is locally appropriate.</p>
Community Consultation and Engagement	3.2.2	<p>The Taskforce proposes the following set of principles to guide councils regarding how consultation and engagement might occur:</p> <ul style="list-style-type: none"> • commitment to ensuring fairness in the distribution of resources (equity); rights are recognised and promoted (rights); people have fairer access to the economic resources and services essential to meet their basic needs and to improve their quality of life (access); and people have better opportunities to get involved (participation) • ensuring that persons who may be affected by, or have an interest in, a decision or matter should be provided with access to relevant information concerning the purpose of the consultation and the scope of the decision(s) to be taken • ensuring that interested persons have adequate time and reasonable opportunity to present their views to the council in an appropriate manner and format • ensuring that the views presented to the council will be given due consideration • ensuring that council, in exercising its discretion as to how consultation will proceed in any particular circumstance, has regard to the reasonable expectations of the community, the nature and significance of the decision or matter, and the costs and benefits of the consultation process • arranging for special consultative procedures in particular instances.
Technology	3.2.3	<p>The Taskforce proposes that:</p> <p>(i) as a general principle the Act should support the optimal and innovative use of technology by councils to promote efficiency and enhance accessibility for the benefit of constituents.</p> <p>(ii) the Act allow each council to determine the most appropriate use of technology taking into account the principles for local government and community engagement through the IPR framework discussed above.</p>
Elections	3.3.1	<p>The Taskforce proposes:</p> <p>(i) use of postal voting at all council elections as a means of increasing efficiency and voter participation and reducing council election costs.</p> <p>(ii) the following possible improvements to electoral provisions:</p> <ul style="list-style-type: none"> • the most appropriate voting system – exhaustive preferential; optional preferential; proportional, or first past the post • the option of utilising electronic voting in the future • mechanisms for removing the need for by-elections, when a vacancy occurs either in the first year following an ordinary election or up to 18 months prior to an ordinary election • half term elections for councillors, similar to Senate elections • the ward system being abolished • improving the adequacy of and access to candidate information prior to elections • the enrolment process and maintenance of the non-residential roll, particularly in the City of Sydney
Meetings	3.3.2	<p>The Taskforce proposes:</p> <p>(i) the provisions relating to council meetings be:</p> <ul style="list-style-type: none"> • reviewed, modernised and any unnecessary prescription and red tape removed, • designed to facilitate councils utilising current and emerging technologies in the conduct of meetings and facilitating public access; and • consolidated into a generic mandatory Code of Meeting Practice that may if necessary be supplemented to meet local requirements, provided the amendments are not inconsistent with the provisions of the Act and standard Code of Meeting Practice.

Topic	Proposal No	Taskforce Proposals
Appointment and Management of Staff	3.3.3	<p>The Taskforce proposes:</p> <ul style="list-style-type: none"> (i) the strategic responsibilities of the council be clearly separated from the operational responsibilities of the general manager in determining the council's structure and be aligned with IPR by: <ul style="list-style-type: none"> • the general manager being responsible for determining the organisation structure and for recruiting appropriately qualified staff necessary to fulfill each role within the structure • the council being responsible for determining those services and priorities required and to provide the resources necessary to achieve the Council's Delivery Program, and • the general manager being responsible for the employment of all staff and there be no requirement for the general manager to consult with the council in relation to appointment and dismissal of senior staff. (ii) all positions meeting the criteria as a senior staff position be treated as such, appointed under the prescribed standard contract for senior staff, identified as a senior staff position within the organisation structure, and the remuneration be reported in the council's annual report. (iii) in line with the principle of reducing prescription: <ul style="list-style-type: none"> • each council to determine how it deals with regulatory responsibilities that fall outside of the Local Government Act, rather than prescribe the appointment of a Public Officer, and • the EEO provisions be incorporated with the IPR processes and procedures (iv) the current prescription in the Act relating to the advertising of staff positions and staff appointments be transferred to regulation or to the relevant industrial award.
Formation and Involvement in Corporations and Other Entities	3.3.4	<p>The Taskforce proposes to defer further consideration of this component of the legislation until the work of the Independent Panel is completed.</p>
Code of Conduct	3.3.6	<p>The Taskforce is not proposing any changes to the conduct provisions of the Act.</p>
Pecuniary Interest	3.3.7	<p>The Taskforce proposes that:</p> <ul style="list-style-type: none"> (i) the pecuniary interest provisions be reviewed to ensure they are rewritten in plain language, easily understood and any unnecessary red tape removed. (ii) consideration be given to utilising available technology to assist with the submission and maintenance of pecuniary interest disclosures and to facilitate appropriate access to this information.
Delegations	3.3.8	<p>The Taskforce proposes that the provisions in the Act relating to delegations be reviewed to ensure they are streamlined; written in plain language; and are reflective of the roles and responsibilities of the council and the general manager to facilitate the efficient, effective and accountable operation of local government.</p>
Financial Governance	3.3.9	<p>The Taskforce proposes:</p> <ul style="list-style-type: none"> (i) there be greater scope for a focus on principles and the definition of financial systems/minimum standards within a new legislative framework and for assimilation with the mechanisms of IPR in line with frameworks proposed for other parts of the legislation. (ii) there be a rebalancing of the regulatory focus of the legislative framework towards systems and risk management rather than process prescription. (iii) to await the Independent Panel work on many of the issues associated with fiscal responsibility including; rating issues; asset and financial planning; rates and charges; management of expenditure; and audit practices before recommending legislative positions on these matters.
Procurement	3.3.10	<p>The Taskforces proposes:</p> <ul style="list-style-type: none"> (i) the adoption of a more principles-based enabling approach to procurement combined with a medium level of regulation designed to ensure support of the principles of value for money, efficiency and effectiveness, probity and equity, and effective competition. (ii) in relation to the current tendering threshold of \$150,000 rather than the legislation setting a dollar value threshold a more flexible principles-

Topic	Proposal No	Taskforce Proposals
		<p>based approach be taken to councils setting the threshold based on risk assessment of the proposed procurement.</p> <p>(iii) the delegations section of the Act be reviewed to facilitate councils entering into collaborative procurement arrangements such as via ROCs and allowing councils to delegate procurement to general managers with a 'report back' mechanism.</p> <p>(iv) any regulation of council procurement support councils utilising available technologies that can assist with efficient, effective and economic procurement processes that are accessible to all relevant stakeholders and are fair, open and transparent.</p>
Capital Expenditure Framework	3.3.11	<p>The Taskforce proposes:</p> <p>(i) that a capital expenditure and monitoring framework be developed to enable the appropriate management of risk by councils. This framework should be tailored to risk levels, including significance of the project (including materiality and whole of life costs) and not based on arbitrary monetary thresholds or procurement vehicles.</p>
Public Private Partnerships	3.3.12	<p>The Taskforce proposes that PPP projects continue to be subject to regulation and aspects that could be streamlined or simplified be identified and mechanisms for ensuring PPPs be considered for inclusion in the IPR framework.</p>
Acquisition of Land	3.3.13	<p>The Taskforce proposes:</p> <p>(i) no change at this time to the acquisition of land provisions as they remain essential to council's continued service and infrastructure delivery, are generally working well and there are no strong reasons to support change.</p> <p>(ii) council plans for the acquisition of land be linked with the IPR processes, and in particular the expressed opinion of the community in the community strategic plan on the need for additional public land or the sale of public land, be included in Delivery Program provisions.</p>
Public Land	3.3.14	<p>The Taskforce proposes:</p> <p>(i) the current processes for council land management, being complex and inconsistent with the Crown Lands regime, be simplified and complementary.</p> <p>(ii) the Local Government Act:</p> <ul style="list-style-type: none"> • require councils to strategically manage council-owned public land as assets through the IPR framework • balance reasonable protections for public land use and disposal where the land is identified as having significant value or importance • end the classification regime of public land as either community or operational land and instead, require the council resolution at the time of acquiring or purchasing land to specify the proposed use or uses • provide that a proposed change in the use or disposal of public land, including consultation mechanisms, should be dealt with through the council's asset management planning and delivery program • retain the requirement for a public hearing to be held by an independent person where it is proposed to change the use or dispose of public land identified as having significant value or importance. The results should be reported to and considered by the council before a decision is made and proposals should be addressed through council's community engagement strategy • recognise the LEP zoning processes and restrictions applying to council owned public land • review the prescribed uses to which public land may be applied to accommodate other uses appropriate to the current and future needs of the community • cease the need for separate plans of management for public land to be prepared and maintained, and in lieu, utilise the asset management planning and delivery program • cease the need for a separate report to be obtained from the Department of Planning and Infrastructure where proposed leases and licences of public land are referred to the Minister for Local Government for consideration.

Topic	Proposal No	Taskforce Proposals
Approvals, Orders and Enforcement	3.3.15	<p>The Taskforce proposes:</p> <ul style="list-style-type: none"> (i) regulatory provisions be reviewed to ensure that the Act provides guidance on regulatory principles but contains flexibility and less prescription in their implementation, with statutory minimum standards or thresholds the council must meet, and councils discretionary 'on-the-ground' functions. (ii) within this framework, the prescriptive processes of approvals and orders be streamlined and, subject to risk assessment, be placed into regulations where possible, allowing the Act to focus on high priority areas and principles. (iii) certain approvals be repealed or transferred to other legislation, such as the installation of manufactured homes and the operation of caravan parks and camping grounds. Installation of domestic oil and solid fuel heating appliances should be transferred to the Environmental Planning and Assessment Act; approvals for filming activities on public land be deleted or transferred to other legislation; approvals for amusement devices be transferred to health and safety legislation; and approvals for engaging in activities on public roads be transferred to roads and transport legislation. (iv) given that maximum penalties have not increased since 1993, penalties for offences in the Act and Regulation be reviewed to ensure they are proportionate to the seriousness and nature of the offence, and act as a deterrent to re-offending. (v) to have regard to the findings and recommendations of the reports by IPART as they affect local government that are due mid-2013. <p>The Taskforce invites comments as to whether there are currently activities requiring approval that are low-risk or redundant and therefore can be removed from the legislation.</p>
Water Management	3.3.16	<p>The Taskforce will await the report and recommendations of the Independent Panel on water management so that the regulation of water by local government in NSW can be further considered. This will involve the determination of appropriate governance structures for water and sewerage delivery in those areas currently serviced by LWUs and water county councils. It will also resolve whether the constitutional and regulatory arrangements for new structures should remain in the Act or relocated into a more appropriate integrated legislative framework.</p>
Performance of Local Government	3.3.18	<p>The Taskforce will await the report and recommendations of the Independent Panel before considering any legislative provisions but invites submissions on whether the performance of local government and its constituent entities should be further monitored and reported.</p>
City of Sydney Act	4.1	<p>The Taskforce proposes that a separate Act for the City of Sydney be retained (pending the report and recommendations of the Independent Panel) noting that the Council is also subject to the provisions of the Local Government Act.</p>

CHAPTER I – BACKGROUND & INTRODUCTION

1.1 Background

In August 2011, councillors and general managers from every council in the State, together with representatives of the State Government, gathered in Dubbo to attend a two day forum to begin the process of creating a strong and viable local government sector for the future. The forum marked the beginning of the Destination 2036 initiative.

The purpose of Destination 2036 was to consider and develop structures and approaches to local government in NSW that would allow the sector to meet the needs and expectations of present and future communities. The Action Plan resulting from Destination 2036 provides the 'road map' for change for the local government sector now and into the future.

One key action arising from the Destination 2036 Action Plan was the establishment of the Local Government Acts Taskforce (the Taskforce). The four member Taskforce, appointed by the Minister for Local Government, the Hon Don Page MP has been charged with reviewing and rewriting the *Local Government Act 1993* and the *City of Sydney Act 1988* to develop modern legislation that will support present and future local government in NSW.

1.2 Introduction to the Local Government Acts Taskforce Members

The members of the Local Government Acts Taskforce are:

- **Mr John Turner** (Chair). Mr Turner was elected an Alderman and Deputy Mayor of Cessnock City Council between 1981 and 1987. He was elected to the NSW Legislative Assembly in March 1988 being the Member for Myall Lakes. Mr Turner served as Deputy Speaker of the Parliament and has had various roles including shadow minister for various portfolios including local government and served on select and parliamentary committees, including Chair of the Local Government Legislation Committee for the 1993 Local Government Act, Police, Energy, Cooperatives, Attorney General, Justice and Industrial Relations. Mr Turner was appointed Deputy Leader of the National Party from 1999 to 2003. His background is in law and politics.
- **Mr Stephen Blackadder**. Mr Blackadder was the General Manager of Rockdale City Council between 1988 and 2002 and General Manager of Warringah Council until 2007. He has served on the Local Government Managers Australia International Committee since 1998. Since 2007 Mr Blackadder has been Executive Director of Blackadder Associates Pty Ltd providing a range of consulting services to local government across Australia. His background is in business studies, management development and strategic planning.
- **Gabrielle Kibble AO**. Mrs Kibble is currently Chair of the NSW Planning Assessment Commission and Chair of the Joint Regional Planning Panel for Western NSW. She was Chair of the Heritage Council of NSW between 2008 and the end of 2011. She was one of the Administrators of Wollongong City Council in 2008 and 2009, and she was the Administrator of Liverpool City Council from 2004 to 2008. Gabrielle Kibble has extensive experience in the public sector, particularly in urban planning and infrastructure development. From December 1987 until November 1997 she was the Chief Executive Officer of the Department of Urban Affairs and Planning; and from July 1992 until April 1994 she was Director General of the NSW Department of Housing. Gabrielle Kibble is a Fellow of the Royal Australian Planning Institute. In 1994 Gabrielle Kibble became an Officer of the Order of Australia. In June 1999 the

University of NSW conferred on her the degree of Doctor of Science, *honoris causa*, and in September 2008 the University of Western Sydney awarded her an Honorary Doctor of Letters.

- **Dr Ian Tiley.** Dr Tiley has over 49 years' experience in local government. Commencing as an employee he held the position of Shire Clerk for 15 years. He was the Mayor of the former Maclean Shire Council (1997 to 2000) and the first Mayor of Clarence Valley Council (2005 to 2008). Since 1991 he served on three general purpose and two county councils, retiring as a councillor in September 2012. Dr Tiley's PhD on Australian local government amalgamations was conferred in 2012. He is an Adjunct Research Fellow at the University of New England Armidale and Deputy Director of the University's Centre for Local Government. Since June 2009, he has been the inaugural Chairperson of Regional Development Australia Northern Rivers Committee, is a Director on the North Coast Institute of TAFE Advisory Council and has held several other ministerial appointments.

Details of the Taskforce Terms of Reference are in Table 1.

Table 1 -Terms of Reference for the *Local Government Act 1993* and the *City of Sydney Act 1988* Taskforce

The Local Government Acts Taskforce will consider the provisions of the *Local Government Act 1993* and the *City of Sydney Act 1988*, and their practical operation so as to:

- Ensure that the legislation and statutory framework meet the current and future needs of the community, local government, and the local government sector.
- Strengthen and streamline the legislation to enable local government to deliver services and infrastructure efficiently, effectively and in a timely manner.
- Ensure that the legislation is progressive, easily understood and provides a comprehensive framework, while avoiding unnecessary red tape.
- Recognise the diversity of local government in NSW.
- Provide greater clarity on the role and responsibility of local government.
- Adopt the decisions of the Government in relation to the recommendations of the Independent Local Government Review Panel.
- Make recommendations to the Minister for Local Government for legislative changes considered necessary and appropriate for a new Local Government Act.
- Identify and recommend to the Minister for Local Government, at any time during the review process, any legislative changes that need to be implemented prior to the completion of the review.

Other considerations:

In carrying out its work the Taskforce will:

- Engage and consult with the wider NSW community and with local government stakeholders (including the Local Government and Shires Associations of NSW, Local Government Managers Australia (NSW), local councils, village committees, county councils, regional organisations of councils, business, community, industrial and employee associations, relevant professional bodies, and government agencies) about the operation of the legislation.
- Identify key principles to underpin local government legislation in NSW. In developing these principles the Taskforce will consider legislation and its application in other jurisdictions both in Australia and overseas.
- Take account of the work, findings and government decisions, in relation to the NSW Planning System Review, the Destination 2036 Action Plan and the NSW State Plan "NSW 2021 – A Plan to make NSW number one".
- Conduct its work in a manner that recognises the terms of reference and approach being taken by the Independent Local Government Review Panel.

It should be noted this Discussion Paper has specific regard for the 6th dot point of the Terms of Reference. Given the Independent Panel is yet to submit its final report to the Minister, this Discussion Paper will not address in detail those issues the Independent Panel is likely to include in its report.

1.3 Approach and Principles for the Development of the New Act

The matters explored in this paper have been developed on the basis of research undertaken by the Taskforce including consideration of ideas and suggestions received during the consultation undertaken to date. A summary of the outcomes from this consultation are in Chapter 2 and Appendix I to this paper.

From the Terms of Reference and supported by the feedback received by the Taskforce through the consultation process, the expectation is that the new Act should be written in modern, plain language and wherever possible eliminate unnecessary 'red tape'.

The most commonly suggested principles from participants in our consultation were as follows:

- Less prescriptive
- Streamlined, simpler
- Logical
- Reduce unnecessary red tape
- The “why” not the “how”
- Flexible to accommodate the differences between councils
- Plain language
- Consistent and integrated with other legislation, regulations and codes
- Recognise technology
- Should be outcome focused, not process driven
- Clear delineation between Act, regulations, guidelines and codes.

Table 2 contains selected extracts from written submissions on the principles for local government which illustrate the above:

Table 2 - Extracts from written submissions on the principles for local government

<p>Submission 83 – Waverley Council</p> <p>Submission 35 – Manly Council</p> <ul style="list-style-type: none"> • Modern • Flexible • Streamlined • Supporting diversity among councils • Written in plain language, and • Eliminates unnecessary red tape affecting councils and the public 	<p>Submission 69 – Council of the Shire of Bourke</p> <ul style="list-style-type: none"> • Recognition that “one size” doesn’t fit all and the diversity of councils activities and the problems they deal with on a daily basis within the different communities • Concise with any additional information need to supplement the Act being provided via regulation or Practice Note • Readily understood and devoid of ambiguity and the need for legal interpretation • Be enabling and not restrictive
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There is a clear expectation the new Act will be streamlined, simplified and logically designed to provide a clear and flexible framework within which the diverse local government sector can operate.

Related to the issue of streamlining is the development of principles-based legislation and relocating necessary prescription to regulation, codes or guidelines. A frequently expressed view was that the new Act should be more focused on outcomes rather than process and be about the “why” not the “how”.

This needs to be balanced against the need for certainty and clarity in the legislation to reduce different interpretation of provisions and consequent potential for increased litigation.

Similarly, relocation of necessary prescription to regulations, codes or guidelines does not reduce the compliance burden on councils and could result in the regulatory framework becoming increasingly fragmented and complex.

A common theme heard during the consultation process was that IPR should be given a more central place in the new Act. If the new Act was structured around IPR it should be possible to streamline the Act and reduce the compliance burden on councils. This could be achieved through the elimination of processes that are currently duplicated in the Act while aligning roles, responsibilities and accountability for compatibility with the IPR framework. A more detailed discussion of IPR and how it could be utilised in the construction of the new Act can be found in section 3.2.1 and throughout this paper.

Taskforce Proposal

1.3 The Taskforce proposes:

- (i) a flexible, principles based legislative framework, avoiding excessive prescription, written in plain language and in a logical form. The new Act should be confined to setting out the principles of how councils are established and operate. When further detail or explanation is required as to how these principles are to be achieved then regulations, codes and guidelines will be used where appropriate.
- (ii) a more consistent approach be taken to the use and naming of the regulatory and other instruments, noting that there is inconsistent use of mandatory and discretionary codes, section 23A guidelines, practice notes, discretionary guidelines and the like.

1.4 Purpose of the Discussion Paper

The intention of this paper is to outline the deliberations of the Taskforce on options and proposals for the principles of the new legislation. The paper is designed to provoke thought and discussion on how the legislation and regulatory regime can best be designed to provide an optimal framework for long-term sustainable local government in NSW.

All interested organisations and persons are invited to comment on the ideas and options outlined in this paper. In particular the Taskforce is interested in receiving submissions that address the following questions relating to the proposals contained in this paper:

1. Do you support the proposed approach to the construction of the new Act and why? If not why not?
2. What proposals do you support and why?
3. What proposals do you think could be improved, modified and strengthened and how?
4. What proposals do not have your support and why?
5. Do you have any alternative proposals for the new Local Government Act that you think the Taskforce should consider? What are they and what are the reasons supporting your proposal(s)?
6. Do you have any other comments relevant to the review of the Local Government Act and the City of Sydney Act?

Details on how to make a submission are contained at the end of this paper.

The Taskforce intends holding Discussion Paper workshops across NSW to discuss the ideas presented in this paper, and which will be open to all interested persons. Details of the workshops and how to register to participate will be available on the Taskforce webpage:

http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_LGAT.asp?mi=10&ml=2&SecHd=HOME&AreaIndex=TASKFORCE

1.5. Limitations of Scope

The work of the Taskforce is occurring in the context of a number of other significant reviews, and especially that of the Independent Panel. The Terms of Reference for the Taskforce include:

- *“Take account of the work, findings and government decisions, in relation to the NSW Planning System Review, the Destination 2036 Action Plan and the NSW State Plan “NSW 2021 – A Plan to make NSW number one”.*
- *Conduct its work in a manner that recognises the terms of reference and approach being taken by the Independent Local Government Review Panel.*
- *Adopt the decisions of the Government in relation to the recommendations of the Independent Local Government Review Panel.”*

Consequently, to accommodate the timetable of the Independent Panel there are a number of areas of the Local Government Act that the Taskforce will not address until the Independent Panel has completed its work. These areas include:

- How councils are established – Chapter 9
- Arrangements for council staff affected by the constitution, amalgamation or alteration of council areas - Chapter 11 , Part 6
- County Councils – Chapter 12, Part 5.
- Financial Management - Chapter 13, Part 3
- How are Councils Financed - Chapter 15

In addition to the work of the Independent Panel, there are a number of other reviews concurrently underway that may also impact the work of the Taskforce. These reviews are listed in Table 3.

Table 3 – Other Reviews Currently Being Conducted Relevant to the Review of the Local Government Acts Framework

Review Subject	Lead Agency	Report due date	Comment
Local Government Compliance and Enforcement	Independent Pricing and Regulatory Tribunal	30 June 2013	The NSW Government has asked IPART to examine local government compliance and enforcement activity (including regulatory powers delegated under NSW legislation) and provide recommendations that will reduce unnecessary regulatory burdens for business and the community. For more details see www.ipart.nsw.gov.au .
Red Tape Review – Licence Rationale and Design	Independent Pricing and Regulatory Tribunal	30 June 2013	The NSW Government has asked IPART to examine all licence types in NSW and identify those where reform would produce the greatest reduction in regulatory burden for business and the community. The aim is to consider the class of instruments that regulators use to grant permission to undertake a particular activity and manage risk. For details see www.ipart.nsw.gov.au .
Crown Land Management Review	Department of Primary Industries		A crown land management review is currently underway. The Division of Local Government, together with other State agencies, is participating on the Legislative Overlap and Red Tape Working Group. One task of the Group is to consider ways in which these areas of overlap can be avoided or mitigated.

Review Subject	Lead Agency	Report due date	Comment
Planning system review	The Department of Planning and Infrastructure		This is major review of the State's planning system, including a review of the <i>Environmental Planning and Assessment Act 1979</i> . It is one of a number of changes and reviews to legislation and policies currently underway that support the planning system in NSW. See www.planning.nsw.gov.au
Domestic Wastewater	Legislative Assembly Committee on Environment and Regulation, NSW Parliament		The Legislative Assembly Committee on Environment and Regulation is conducting an inquiry into the regulation of domestic wastewater, including the appropriateness of current regulatory arrangements for the management of domestic wastewater and the adequacy of inspection procedures and requirements to report incidents. Further detail is found later in this paper under 'On-Site sewerage management'.
Urban Water Regulation Review	Department of Finance and Services	2012	Review of the <i>Water Industry Competition Act 2006</i> and the wider regulatory framework – principally sections 60 and 68 of the Local Government Act used to regulate council and private recycled water schemes.
Local Government Elections September 2012	Joint Standing Committee on Electoral Matters, NSW Parliament	30 June 13	An inquiry is being conducted into the September 2012 Local Government elections with particular reference to: the cost; experience of councils that conducted their own elections; efficiency and participation; non-residential voting; and the impact of the Election Funding, Expenditure and Disclosures Act 1981 on participation by candidates. See http://www.parliament.nsw.gov.au/electoral matters
Other reviews			Reviews of the Land Acquisition (Just Terms Compensation) Act 1991 and the Residential Parks Act 1998 are also underway by their respective agencies.

CHAPTER 2 – CONSULTATION OUTCOMES

2.1. Preliminary Ideas Paper Consultation

In October 2012 the Taskforce released its Preliminary Ideas Paper, the purpose of which was to generate discussion and ideas regarding the form and content of the new legislation.

The Paper posed a number of questions and invited written submissions in response to these questions. In November/December 2012 the Taskforce conducted workshops for councillors and relevant council staff, including county councils, to discuss the questions posed in the Paper.

Summaries of the outcomes of the workshops and copies of the formal submissions received by the Taskforce in response to the Paper are posted on the Taskforce webpage:

http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_LGAT.asp?mi=10&ml=2&SecHd=HOME&AreaIndex=TASKFORCE

A summary of the submissions can be found in Appendix 1.

2.2. Summary of Ideas and Suggestions Received through Workshops and Written Submissions

The following discussion provides an overview of the key themes and issues that emerged from the workshops and submissions responding to the five (5) questions posed in the Preliminary Ideas Paper.

The information below summarises the main themes generated by the participants at the workshops and in written submissions. Therefore, this summary is not exhaustive and does not cover all matters contained in the written submissions, which can be accessed on the Taskforce webpage and Appendix 1.

The information presented below does not necessarily represent the views of the Taskforce. However, it has been taken into consideration when formulating recommendations and proposals on the form and framework of the new Act.

i) What top 5 principles should underpin the content of the new Local Government Act?

Throughout the workshops and the written submissions there was general consensus about the principles for the framework for a new local government Act. The list in **Table 4** summarises the most commonly expressed principles.

Table 4 – Principles for the framework of local government

- Autonomy, self determination – local councils should have a power of general competence
- Interconnectedness – with the local community, the region, and the State
- Good governance – separation of powers of councillors and council staff, clarity of roles and responsibilities – council staff, councillors, mayor and the State
- Leadership - stewardship
- Social justice, equity
- Transparent, accountable, efficient, effective, ethical, responsible decision making - promote integrity
- Sustainability
- Fiscal responsibility
- Consultation – acting in the public interest; facilitate and encourage local participation
- Strategic long term focus

- Service to the community now and into the future
- Local democracy
- Strengthen regional and State ties - partnerships
- Flexible
- Custodian and trustee of public assets to be managed effectively and accountability
- Promote economic, social and environmental wellbeing of LGA
- Business-like
- Foster innovation
- Recognise and manage risk
- Core functions and community enhancing functions

Table 5 - Extracts from written submissions demonstrating the commonly agreed principles for local government.

<p>Submission 98 – Local Government and Shires Associations of NSW</p> <ol style="list-style-type: none"> 1. Seek to give clear expression of the purpose, status, models and functions of 21st century Local Government 2. Seek to maximise council autonomy 3. Equip councils to be the leaders, identity and place makers, and service providers their communities want them to be 4. Avoid unnecessary prescription and/or regulation of councils and the communities they serve <p>Submission 24 - Warringah Council</p> <ol style="list-style-type: none"> 1. Sustainability both present and future focussed. 2. Acting in the public interest considerations 3. Democratic representation 4. Good governance of and by local government 5. Establishing and maintaining partnerships with other bodies 	<p>Submission 29 - Shoalhaven City Council</p> <ol style="list-style-type: none"> 1. Good Governance – ethics, transparency, accountability 2. Sustainability – financial, economic, quality of life, environment 3. Community engagement – involve residents and ratepayers and other relevant stakeholders 4. Social justice – access and equity in services and policy 5. Customer/stakeholder focus <p>Submission 71 – Cowra Council</p> <ol style="list-style-type: none"> 1. Provide flexibility to Councils 2. Reduce and streamline compliance whilst retaining accountability 3. Clarify responsibilities to provide certainty 4. Autonomy to provide increased service levels 5. Adopt an underlying philosophy of State and Local Government being equal partners such that the legislation is not written in a prescriptive master/servant manner
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It was evident from the written submissions and workshops that there is clear support for local government in NSW to be autonomous and with a broad range of functions and responsibilities, subject to any legal constraints.

The importance of the principle of local democracy and keeping the “local” in local government was also evident.

The principle of autonomy was balanced by the principle that local government should exercise its powers within a strong governance framework, promoting accountability to the community and the State, and exercising long term social and fiscal responsibility.

Linked with accountability was the importance of relationships between councils and their local community, more broadly on a regional basis, and with the State Government.

This was underpinned by the principle that local government, in the provision of services to the community and as custodian and trustee of public assets, should exercise its functions in meaningful consultation and engagement with its community to ensure it is acting in the public interest.

The view that local government should provide long-term sustainable strategic community leadership was also convincingly evident both from the workshops and in written submissions.

ii) **What is currently working well in the Local Government Act and why, and should it be retained in the new Act?**

Feedback can be grouped into two main categories:

- a) ideas and suggestions for which there was a general consensus and few, if any, opposing suggestions, and
- b) ideas and suggestions which appeared both in response to this question and to question 4 (what is not working well). On closer consideration of these matters it was evident that these areas were often where the general principle covered by the legislation was supported, but it was felt the section of the legislation could be improved by being modernised, simplified or clarified.

The following is a summary of ideas and suggestions where there was general consensus they were working well.

Those ideas and suggestions submitted in response to both this question and question 4 have been included in the summary of feedback and submissions in response to question 4 – what is not working well – barriers or weaknesses.

Table 6 lists the key areas that were submitted as areas of the current Local Government Act that are working well and should be retained in the new Act.

Table 6 –Key areas of the Act identified in submissions as working well

- Charter – needs to be modernised and reflect integrated planning and reporting
- Section 24 – devolution of general power of competency
- Community Strategic Plan/Integrated Planning and Reporting (but with refinement)
- Role of councillors/mayor and general manager – but needs clarification
- Many sections work well, but focused on processes rather than outcomes
- Section 10 – provision relating to closing of meetings
- Meeting procedures, but needs to be consolidated
- Elections and democratic principles generally, however, election processes could be improved – see response to question 4 below
- Section 733 – exemption from liability – needs to be extended to cover coastal councils to limit potential exposure arising from climate change
- Delegations of authority, but needs refinement to reflect roles and responsibilities and facilitate the efficient and effective operation of councils
- The Act structure generally works well, but needs refinement to reflect integrated planning and reporting
- Disclosure of interests with some clarification and refinement
- Dictionary

The Taskforce also received feedback indicating that generally the Act worked well but would benefit from a review to make it more streamlined and coherent. For example

“The Associations believe the intent and the overall structure of the Local Government Act 1993 remain valid. We see no compelling reason to scrap the Act and start afresh with a blank canvass. However, the Associations believe that the legislation needs a major edit to assist it remain contemporary.”
(Submission 98 – Local Government and Shires Associations of NSW)

It is evident from the submissions and workshops there are several areas that should be elevated to greater prominence in the new Act. Perhaps the three essential areas are:

- The Charter
- Integrated Planning and Reporting
- Roles and Responsibilities

Charter

There was almost universal support that the Charter is an important part of the Act and should be retained. While there were a number of suggestions that the Charter would benefit from redrafting to be more principles-based and better reflect the current and future role of modern local government, it was apparent it was now providing valuable guiding principles for local government.

The Charter provides “an effective statement of purpose for Councils” (Submission 27 – Planning Institute of Australia, (NSW Division))

Integrated Planning and Reporting (IPR)

The value of IPR and the perspective that it should be given a more central place in the new Act was strongly echoed throughout the submissions and workshops. With few exceptions, both the workshops and the written submissions nominated IPR as working well.

“Integrated Planning & Reporting is the most important ideological change introduced to the sector since the formation of councils themselves. These provisions need to be brought forward within the Act to complement the provisions dealing with the councils’ Charter.” (Submission 83 - Waverley Council).

Suggestions were made for how the new Act could be structured around IPR and consequently how the Act could be more streamlined to reduce current inconsistencies and duplication in reporting and consultation requirements.

“While these provisions have worked well, a clear failure in their drafting is a lack of a clear linkage to councils’ land use planning process” (Submission 44 – NSW Business Chamber)

Feedback was also received that consideration should be given to simplifying the requirements and processes of IPR, particularly in respect of smaller councils and county councils.

“Concept of integrated planning should remain and continue to develop but in a more streamlined way and one that integrates local government and State Government.” (Submission 81 – Blue Mountains City Council)

Similarly, suggestions were made that council reporting and community consultation requirements generally could be streamlined and made more coherent by using IPR as the framework for the new Act.

Roles and Responsibilities

It was apparent from the workshops and the written submissions that the importance of having clear roles and responsibilities for councillors, the mayor and the general manager cannot be understated.

“The current Act provides a clear distinction between the roles of elected members and the General Manager and needs to be strengthened.” (Submission 53 - Queanbeyan City Council)

The importance of clearly defining the role and responsibilities of elected representatives and the general manager is also reflected in other areas where feedback and submissions suggested the Act is not working well, such as the provisions relating to the appointment of senior staff and the review of the organisation structure.

There were various suggestions regarding refining the definition for the mayor and councillors so that it is reflective of the IPR framework.

iii) Are there areas in the Local Government Act that are working well but should be moved to another Act or into Regulations, Codes or Guidelines?

In considering this question, a frequently expressed view was the Act should be less prescriptive and more principles-based. It was felt that the Act should contain the “what”, with the “how” being contained in regulation, codes or guidelines. As one councillor expressed it *“I need to be able to tell the time not how to make the watch”*.

This view is tempered with the opinion that it is important local government has a degree of certainty and a concern that if the new Act is too flexible it could become ambiguous, subject to broad interpretation and thus result in councils becoming subject to disputes and potentially increased litigation.

The view was also expressed that by moving provisions working well into regulations, codes and/or guidelines it *“will become very difficult and tedious to work with a plethora of documents and it will only result in more confusion”*. (**Submission 100 – Penrith City Council**)

Nevertheless, there was general agreement that prescription in the Act should be minimised. **Table 7** lists the areas that were recommended to be moved to another Act or to regulations, codes or guidelines.

Table 7 – What could be moved into another Act, Regulation, Codes or Guidelines

- Elections
- Approvals
- Plans of management
- Pecuniary interest
- Section 68 approvals – manufactured homes; on site waste water; wood heaters
- Section 64 - water
- Public Land provisions
- Tendering
- Chapter 7 approvals could be transferred to Environmental Planning and Assessment Act
- Notices and orders transferred to Environmental Planning and Assessment Act and penalties rationalised under one Act
- Equal Employment Opportunity could be removed if section 122B of the *Anti-Discrimination Act 1977* is amended to include Local Government Authorities

iv) What is not working well in the Local Government Act (barriers and weaknesses) and should either be modified or not carried forward to the new Act?

This question elicited the largest response. Submissions varied from single issue submissions to detailed responses addressing each section of the current Act. It is not intended in this summary of submissions to deal with detailed recommendations for amendment of specific sections. Where relevant, the suggestions and submissions will be taken into account in the formulation of the new Act.

There were a number of areas that appeared on ‘both sides of the ledger’, namely in response to question ii) “What is working well” and to this question “What is not working well”. Generally these matters were supported in principle and should be retained but improvement, modernisation, clarification or simplification was needed.

Responses also included a general observation that there are overlaps and at times inconsistency between the Act and other legislation governing the operations and functions of local government, and that it would be beneficial if these could be resolved.

The following Table 8 lists the general topic areas, of those ideas and suggestions which were provided in response to this question. For a summary of the suggestions relevant to each topic area see Appendix 1.

Table 8 – General Topic Areas Identified in Submissions as Barriers or Weaknesses in the Act

<ul style="list-style-type: none"> • Public land • Acquisition of land • Tendering • Approvals • Orders • Councillor remuneration – Local Government Remuneration Tribunal • Expenses and facilities • Elections • Council Staffing 	<ul style="list-style-type: none"> • Public Private Partnerships and formation of corporations • Conduct • Revenue • Fees • Loans • Audit and risk management • Enforcement • Alcohol free zones and alcohol prohibited zones • Water management
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CHAPTER 3 ELEMENTS OF A NEW LOCAL GOVERNMENT ACT

The purpose of this section of the Discussion Paper is to explore key elements of the Local Government Act and put forward proposals for comment on how these elements might be accommodated in the new Act. Table 9 below sets out the elements explored in this paper.

Table 9 – Elements of a New Local Government Act Explored in this Paper

Part I - Guiding Principles for Local Government in NSW

- Purpose of Local Government Act
- Role of Local Government
- Guiding Principles (Charter)
- Legal status of councils (includes establishment)

Part II - Strategic Framework for Local Government in NSW

- Integrated Planning and Reporting
- Community Engagement

Part III - Council Operations

- Governance Framework
- Financial practices
- Regulatory Functions
- Other functions

Part IV - Tribunals and Commissions

The Taskforce considers that IPR should form the central theme for the new Act as the primary strategic tool that supports councils delivering to their communities. This is discussed more fully in section 3.2.1.

The above is not intended to be an exhaustive list of the contents of the new Act, but indicates the matters the Taskforce believes should comprise the key elements of new legislation.

The Taskforce has the view that the Act should focus on providing guiding principles for local government – the ‘why’ not the ‘how’ - and wherever possible prescription should be removed from the Act and relocated to another Act, regulations, codes or guidelines.

There are a number of topic areas, detailed in section 1.5 above, currently being reviewed by other agencies or groups, including the review being undertaken by the Independent Panel. Consequently, the Taskforce will not be able to consider these areas fully until these reviews are complete.

Part I – Guiding principles for a new Local Government Act

3.1.1 Purposes of the Local Government Act

Section 7 of the *Local Government Act 1993* defines the objects of the Act. The section has also been described as setting out the reasons for making the Act and its scope.

While no submissions were received regarding this section, it is the view of the Taskforce that this is an important provision of the Act as it:

- sets out the intention of the Act; and
- provides valuable assistance for interpretation of the provisions of the Act.

All other Australian and New Zealand jurisdictions have similar provisions.

The Taskforce reviewed current section 7 of the Act, applying the principles for streamlined, modern, enabling provisions where possible, and also taking into account the contents of the proposed draft 'charter/role of local government', which is discussed below.

Taskforce Proposal

3.1.1 The Taskforce proposes the following draft Purposes of the Act:

Table 10 - Proposed DRAFT - Purposes of the New Local Government Act

The purpose of this Act is to provide

- (1) a legal framework for the NSW system of local government in accordance with section 51 of the *Constitution Act 1902 (NSW)*
- (2) the nature and extent of the responsibilities and powers of local government
- (3) a system of local government that is accountable, effective, efficient and sustainable.

3.1.2 Role and Principles of Local Government

Section 8 of the *Local Government Act* “*comprises a set of principles that are to guide a council in carrying out of its functions*” (Introduction to Chapter 3 of the Act). The value and importance placed on the Charter was clearly evident from the feedback received during consultation.

Observations

The Taskforce recognises that the council's Charter is a crucial section of the Act. It provides the clearest message to councils and communities about what councils may do and the principles guiding their actions. It also sets the 'tone' for the Act and, implicitly, the nature of the local-State Government relationship.

However, it is also evident the Charter requires redrafting to be more principles-based and to better reflect the current and future role of local government in NSW. In its current form the Charter:

- casts councils as individual entities rather than partners in a broader local government system in which various partners, including the State Government, have a role
- lacks clear links to IPR as a strategic planning framework for achieving community outcomes

- casts councils more as service delivery agents rather than enablers and procurers, to meet community needs
- takes a 'one size fits all' approach in assigning the same role and functions to all councils
- lacks clear priorities – e.g. whether core/statutory functions/services be carried out prior to community enhancing functions/services
- lacks mention of priorities that may have emerged since the Act was written, such as providing for public assets and assessing risk
- is a mix of functions, principles and corporate objectives.
- lacks structure – it is an ad hoc mix of functions, principles and objectives with additional statements 'bolted on' over time
- includes some social groups but not others (for example: children and multiculturalism but not Aboriginal people)
- uses language that is outdated and too complex, including possibly the term 'Charter' itself.

Considerations

Having considered the importance and value of the Charter, the Taskforce is of the view that the Charter should be replaced by the Role and Principles for local government. This will reflect local government as part of a broader system that works strategically and in partnership to ensure efficient and effective services and infrastructure that improves outcomes for communities.

The Taskforce is of the opinion that the revised Role and Responsibilities should include the following elements:

- a definition of the role of local government to achieve community outcomes by:
 - working in partnership with the State Government and others
 - effectively and efficiently leading and serving the local community
- clearer linkages to IPR by introducing underlying principles about strategic capacity and long-term sustainability
- restructure the charter by separating it into two sections as follows:
 - Role of local government as a system and how this is fulfilled
 - Guiding principles to be observed by local government
- clarifying and updating the Charter as outlined above utilising succinct and modern language

The Taskforce also considers that councils should retain a general autonomy, subject to limitations, to provide the services and infrastructure identified, via the IPR framework, to meet the needs and expectations of their communities.

Taskforce Proposal

- 3.1.2** The Taskforce proposes the inclusion of a new Role of Local Government and a set of Principles for Local Government that will replace the Charter in the new Act:

Role of Local Government

The role of local government is to lead local communities to achieve social, economic and environmental well being through:

- i) utilising integrated strategic planning
- ii) working in partnership with the community, other councils, State and Commonwealth governments to achieve outcomes based on community priority as established through Integrated Planning and Reporting
- iii) providing and procuring effective, efficient and economic infrastructure, services and regulation
- iv) exercising democratic local leadership and inclusive decision-making

Principles of Local Government

Principles to be observed by local government are to:

- i) provide community-based representative democracy with open, unbiased and accountable government
- ii) engage with and respond to the needs and interests of individuals and diverse community groups
- iii) facilitate sustainable, responsible management, development, protection and conservation of the natural and built environment;
- iv) diligently address risk and long-term sustainability;
- v) achieve and maintain best practice public governance and administration, and to act fairly, responsibly, ethically, and in the public interest; and
- vi) optimise technology, and foster innovation and flexibility.

3.1.3 Constitution of councils

A council is a legal entity established by NSW statute. The current Act constitutes a council as a 'body politic of the State' with perpetual succession and the legal capacity and powers of an individual (section 220). Prior to amendment in 2008, councils had the status of 'body corporate' (i.e. corporation).

While the Taskforce notes the request by Local Government NSW to return councils to 'bodies corporate', the Taskforce has not been presented with compelling evidence for the need to do so at this time.

3.1.4 Roles and Responsibilities

Councillors as the elected representatives comprise the governing body of councils. The Act sets out the role of the governing body "*to direct and control the affairs of the council in accordance with this Act.*" (s223). The Act also defines the role of the mayor, councillors and the general manager.

It was clear from the feedback received by the Taskforce that it is vital to clearly define the different roles and responsibilities of the councils governing body, mayor, councillors and general manager. In particular, it was evident there is a general view that the Act should more clearly define the separation of responsibility of the councillors/council governing body for setting the strategic direction and policy of the council and the responsibility of the general manager as accountable to the governing body for implementation of strategy and policy and the operational activities of the council.

The Taskforce is aware that the Independent Panel is reviewing the role of the mayor and accordingly defers consideration of this matter.

Part II – Strategic Framework for Local Government in NSW

3.2.1 Integrated Planning and Reporting

One of the principal roles of local government is to exercise strategic leadership. It does this by the development and implementation of strategic plans designed to achieve social, economic and environmental wellbeing for the community. The primary tool by which local government exercises this role is IPR.

In 2009, IPR was introduced into the Local Government Act as a strategic tool to help councils to implement their roles of leadership, advocacy and service provision for local communities. Through the use of reporting to the community it strengthens accountability. Used to its best potential, IPR assists in strengthening the long-term sustainability of councils.

The object of IPR is to “improve long-term strategic planning and resource management by local councils.” And “mandate an improved system of planning for local government so that councils can focus on their top priority – providing better services to their communities.” (Local Government Amendment (Planning and Reporting) Bill 2009 – second reading speech of Minister Perry)

IPR requires councils to engage with local communities and other partners, including the State Government, to plan strategically and implement actions that lead to sustainable positive social, economic, environmental and civic leadership outcomes.

Diagram 1 – Diagrammatic representation of the IPR Framework (Division of Local Government 2013 – Integrated Planning and Reporting Guidelines for Local Government in NSW)



This framework enables councils to reposition themselves from the role of 'service provider' to a more 'facilitating' or 'place-shaping' role. It introduces the concept of a broader local government system, where councils work in partnership with others, including other levels of Government, to deliver better community outcomes.

The Act currently prescribes, in detail, the requirements for councils to prepare, maintain and implement:

- a long-term Community Strategic Plan
- a Resourcing Strategy (including long-term asset management, financial and workforce plans)
- a Delivery Program outlining the activities a council will undertake during its four-year term to meet community needs identified in the CSP and within available resources.
- an Operational Plan (outlining in more detail what councils will do over the upcoming/current year including a budget)
- an Annual Report
- an 'End of Term' Report.

While the provisions of IPR include some detailed processes, the framework is designed to be flexible so that implementation can be tailored to the capability and needs of individual councils.

Observations

It is evident from consultation feedback (Section 2.2 above) that IPR is strongly supported by the local government sector. Furthermore, suggestions were made that IPR should be more central to the Act and reflected in other sections of the legislation, such as in the Charter and roles and responsibilities provisions.

Because IPR was not introduced until 2009 the provisions are buried in the chapter of the Act on accountability, rather than being integrated through the Act. Consequently IPR provisions currently do not fit well in the Act, which is structured around processes and procedures, with councils as 'service/function providers' rather than place-shapers focused on outcomes for the community.

The current Act treats councils as individual entities and does not recognise and support the role of councils in regional and State planning as contemplated by the IPR framework.

Consequently, the Act can be seen to discourage regional collaboration and limit the ability of councils to work in partnership to deliver community outcomes. For example, the Act places limits on the power of Regional Organisations of Councils to provide services.

There is also an apparent disconnection between IPR and other statutory functions undertaken by councils such as land management and environmental planning, as well as a perceived, regulatory burden from duplicated processes.

While the feedback supported IPR, there were suggestions it could be simplified and streamlined. It is evident that IPR is perceived by some councils as lacking flexibility and placing too high a regulatory burden on councils with fewer resources. For example, given that councils are required to prepare an Annual Report the requirement to also prepare an End of Term Report appears a duplication.

Taskforce Proposal

3.2.1 The Taskforce proposes that:

- (i) IPR be elevated to form a central 'plank' of the new Act as the primary strategic tool to enable councils to fulfil their leadership role and deliver infrastructure, services and regulation based on community priorities identified by working in partnership with the community, other councils and the State Government.
- (ii) other provisions of the Act be drafted so as to better support IPR including accountability to the community, financial sustainability and partnership with the State and others to deliver community outcomes.
- (iii) where possible relevant provisions from other sections of the Act be incorporated into IPR to reduce duplication. For example, capital planning and expenditure approval provisions could be moved to the IPR resourcing strategy provisions; and community consultation processes should reflect IPR community engagement principles and need not be repeated throughout the Act.
- (iv) the IPR provisions be simplified to increase flexibility for council to deliver IPR in a way that is locally appropriate.

3.2.2 Community Consultation and Engagement

Background

Community engagement is an integral requirement of IPR as the key mechanism by which councils identify community priorities to form the basis of the Community Strategic Plan. It is a requirement of IPR that all councils prepare and implement a Community Engagement Strategy.

There are other matters where councils are required to consult with their constituents and facilitate feedback and comment.

Currently there are many Act provisions requiring different forms of consultation and engagement between councils and their community, and on occasion, Ministers and State agencies.

Observations

The Taskforce considers that this highly regulatory approach is unnecessary in many instances and is contemplating a set of guiding principles for consultation and engagement that could be synchronised with the IPR Framework.

Taskforce Proposal

3.2.2 The Taskforce proposes the following set of principles to guide councils regarding how consultation and engagement might occur:

- commitment to ensuring fairness in the distribution of resources (equity); rights are recognised and promoted (rights); people have fairer access to the economic resources and services essential to meet their basic needs and to improve their quality of life (access); and people have better opportunities to get involved (participation)

- ensuring that persons who may be affected by, or have an interest in, a decision or matter should be provided with access to relevant information concerning the purpose of the consultation and the scope of the decision(s) to be taken
- ensuring that interested persons have adequate time and reasonable opportunity to present their views to the council in an appropriate manner and format
- ensuring that the views presented to the council will be given due consideration
- ensuring that council, in exercising its discretion as to how consultation will proceed in any particular circumstance, has regard to the reasonable expectations of the community, the nature and significance of the decision or matter, and the costs and benefits of the consultation process
- arranging for special consultative procedures in particular instances.

3.2.3 Technology

Background

Since the Act was written in 1993, technology has rapidly developed and is now a valuable mechanism used by councils to connect with their communities and more efficiently and effectively deliver services and undertake operations.

The Act currently prescribes certain procedures councils must follow to undertake important communication processes. Technology is prescribed for matters that can be broadly grouped as:

- Governance, for example, council meeting procedures including attendance in person, election procedures including voting in person
- Public notice, for example, of draft policies, plans, codes and annual reports, requests for tender and senior staff positions
- Statutory transactions, for example, transmission of rates notices, notification of nomination as a candidate for election.

Prescription relating to utilisation of technology tends to be about:

- Communication mode/medium, for example attendance at council meetings must be in person, advertising must be via a local newspaper, boundary changes must be gazetted, transmission of rates notices must be via mail/email
- Communication timeframes, for example minimum times for advertising, rates notices must be served annually or quarterly.

Observations

The need for the Act to better enable the use of technology by councils is evident from the feedback received. At the workshops and through formal written submissions examples were provided illustrating how the Act inhibits use of current technology by local government and where requirements are onerous, expensive and constraining.

The Taskforce also received suggestions and proposals for how this issue could be addressed. Some areas where it was suggested that the utilisation of e-technology would be valuable included recruitment, tendering, community engagement, data management, and in certain circumstances the attendance and participation of councillors at council meetings.

It is evident to the Taskforce that the prescription in the Act has not kept pace with advances in technology and inhibits its effective and efficient use by councils because it:

- is inflexible and limiting
- creates unnecessary red tape, time delays and expense
- creates competitive disadvantage
- does not allow councils to take advantage of technological advances
- creates disincentives for councils to be innovative
- is contrary to current government policy direction towards autonomy of local government.

A less prescriptive Act that focuses on outcomes and identifies principles would be more adaptable to technological change and allow councils to use the most effective means available to achieve those outcomes.

Requirements to use certain technology does not recognise council expertise in community engagement and may discourage councils from considering use of more innovative technology, such as for example social media.

The use of technology must be balanced against the need to ensure minimum standards for transparency and accountability are maintained for:

- high risk processes (for example meeting and election procedures)
- critical documents (for example draft strategic/operational plans, annual report)
- matters the community cares about (for example fees/charges, public assets).

An example of an area where there is some debate regarding the appropriateness of the utilisation of technology relates to the current requirement that councillors must attend council meetings in person. Suggestions were received that remote attendance at council meetings by councillors and officials should be allowable in certain circumstances, particularly in rural and regional areas and/or in times of natural disaster such as flooding or bushfire.

Advantages of allowing remote attendance at council meetings include reduced costs to council; less travel time for councillors; and increased accessibility especially in times of natural disaster. Possible disadvantages could be that participation may be less effective and confidentiality of closed meetings might be compromised.

However, in utilising technology it is important that councils ensure that this does not result in reduced access to council services to those members of the community that do not have access to, or the ability, to utilise modern technologies, and that the need to maintain requisite security and confidentiality is managed.

Taskforce Proposal

3.2.3 The Taskforce proposes that:

- (i) as a general principle the Act should support the optimal and innovative use of technology by councils to promote efficiency and enhance accessibility for the benefit of constituents.
- (ii) the Act allow each council to determine the most appropriate use of technology taking into account the principles for local government and community engagement through the IPR framework discussed above.

Part III – Council Operations

Governance Framework

The Taskforce consultations revealed a general consensus that local councils should be generally autonomous, subject to any legislative restriction. However, this was balanced by the principle that local government should exercise its power within a strong governance and administrative framework which facilitated councils acting fairly, responsibly, ethically, and in the public interest.

The Act is the principal element of the governance framework for local government in NSW, setting the foundations for councils operations and on which councils can build a localised policy structure.

The following sections address some of the main elements of this governance framework that are presently prescribed by legislation.

3.3.1 Elections

Background

A guiding principle for local government in NSW is representative democracy, achieved through the election of the members of council's governing body (the councillors), by the local community.

It is critical that the mode and term of election is appropriately enshrined to ensure there is community confidence that elections are ethical, fair and unbiased.

Chapter 10 of the current Act deals with the election of persons to civic office.

The Act currently provides for:

- the qualifications for civic office
- the term of a council (4 years)
- eligibility to vote
- the voting system (preferential where one position must be filled and proportional where two or more positions must be filled)
- councils to choose whether to conduct elections or to engage the NSW Electoral Commissioner (except in the City of Sydney where the Electoral Commissioner must prepare the non-residential roll)
- councils to choose whether to conduct elections or to engage the NSW Electoral Commissioner
- elections to be administered by the general manager of the council or the NSW Electoral Commissioner

The current regulatory approach to elections is highly prescriptive given that the nature of elections calls for clarity and certainty in application and interpretation.

On 1st June 2010, the NSW Parliament Joint Standing Committee on Electoral Matters reported on its inquiry into the 2008 local government ordinary elections.

The report contained 16 recommendations and one finding. Four of the Committee's recommendations directly related to the Local Government Act:

1. Recommendations 2(a) and 2(c) – that the Act be amended to require the NSW Electoral Commissioner to provide a report on each set of local government elections. [Note: this is already an administrative practice adopted by the Commissioner]

2. Recommendations 9(a) and 9(b) - which concern non-residential rolls of electors. Electoral rolls are governed by sections 298-305 of the Local Government Act. However no legislative amendment was proposed.
3. Recommendation 10 – that the witnessing requirement for Candidate Information Sheets (which must accompany candidate nomination forms) be discontinued. This is a requirement of section 308 of the Act.
4. Recommendation 11 – that the Local Government Act be amended to allow optional universal postal voting.

Observations

From the feedback received during consultation it is apparent that there is general support for local democracy and the election of local representatives. However, it was also clear there are a number of matters related to elections that are considered not to be “working well”. Suggestions were made for improvement to the current elections provisions including:

- the most appropriate voting system – exhaustive preferential; optional preferential; proportional, or first past the post
- support for the introduction of postal voting, particularly for by-elections and if possible the option of electronic voting
- mechanisms for removing the need for by-elections when a vacancy occurs either in the first year following an ordinary council election or up to 18 months prior to an ordinary election
- suggestions for half term elections for councillors, similar to Senate elections
- suggestions that division of councils into wards be abolished;
- suggestions to improve the adequacy of, and access to, candidate information prior to elections
- concern about the enrolment process and maintenance of the non-residential roll, particularly in the City of Sydney

There was support to enact a separate Elections Act incorporating the requirements currently found in the Local Government Act and the General Regulation, together with those of the Parliamentary Electorates and Elections Act. This would consolidate State and local government election processes in one principal Act and would be consistent with the terms of reference of the Taskforce, to recommend what matters can be streamlined or transferred to other legislation.

The Taskforce notes that the NSW Parliament Joint Standing Committee on Electoral Matters is currently conducting an inquiry into the September 2012 Local Government Elections and the Committee’s final report is due by 30 June 2013. See also Chapter 4 for discussion of election issues relevant to the City of Sydney.

Taskforce Proposals

3.3.1 The Taskforce proposes:

- (i) use of postal voting at all council elections as a means of increasing efficiency and voter participation and reducing council election costs.
- (ii) the following possible improvements to electoral provisions:
 - the most appropriate voting system – exhaustive preferential; optional preferential; proportional, or first past the post
 - the option of utilising electronic voting in the future

- mechanisms for removing the need for by-elections, when a vacancy occurs either in the first year following an ordinary election or up to 18 months prior to an ordinary election
- half term elections for councillors, similar to Senate elections
- the ward system being abolished
- improving the adequacy of and access to candidate information prior to elections
- the enrolment process and maintenance of the non-residential roll, particularly in the City of Sydney

3.3.2 Meetings

Background

Council meetings are the central mechanism through which councillors exercise their decision making function. It is critical that meetings are conducted efficiently, fairly and effectively and are open to the public.

As evidenced from the consultation process it is an important principle that local government is open, unbiased and accountable. Meetings management is an important part of achieving this principle.

While legislation sets out certain procedures that must be followed in council and committee meetings, beyond this meeting procedures vary between councils. These differences usually reflect local practices and priorities.

Rules and procedures for conducting council meetings are found in Chapter 12 of the Act, the Regulation, the Model Code of Conduct for Local Councils in NSW, the Guidelines for the Model Code of Conduct for Local Councils in NSW, and the council's Code of Meeting Practice.

The Meeting Code is required to be determined by the council after public consultation. The code must not be inconsistent with the Act, the Regulation or the Model Code, but it can 'fill in the gaps'.

Observations

Meeting procedures is a component of the Act that was identified in the consultation process as working well, although there were suggestions that some provisions could be consolidated.

Given the importance of council meetings and the feedback generally that meeting procedures are working well, the Taskforce does not consider it necessary to make any changes to the relevant provisions in the Act. However, it is considered appropriate to review the provisions for the purpose of consolidation and some simplification.

The Taskforce is interested in the proposal that a standard model Code of Meeting Practice be developed for adoption by all councils which councils may supplement with local components, provided the amendments are not inconsistent with the provisions of the Act and standard Code.

Taskforce Proposal

3.3.2 The Taskforce proposes:

- (i) the provisions relating to council meetings be:
- reviewed, modernised and any unnecessary prescription and red tape removed,
 - designed to facilitate councils utilising current and emerging technologies in the conduct of meetings and facilitating public access; and
 - consolidated into a generic mandatory Code of Meeting Practice that may if necessary be supplemented to meet local requirements, provided the amendments are not inconsistent with the provisions of the Act and standard Code of Meeting Practice.

3.3.3 Appointment and Management of Staff

Background

The general manager and council staff have primary responsibility of implementing council's delivery program and ensuring that council operations comply with the regulatory framework and the policies and procedures set by council's governing body.

As public entities it is essential the community has confidence that the appointment of staff is an open and unbiased process and that council has an appropriate workforce resourcing strategy.

Chapter 11 of the Act addresses matters relating to staffing of councils. The current regulatory approach is a mix of broad policy statements and prescriptive procedural requirements.

Feedback suggests that the separation of powers of councillors and council staff and clarity of roles and responsibilities are important principles that should underpin the local government framework.

Submission comments and suggestions relating to employment included:

- The requirement for councils to review the organisation structure within 12 months of taking office is ambiguous, does not fit well with IPR requirements and causes uncertainty regarding the roles and responsibilities of the general manager and the council in regard to staffing.
- Issues relating to security of tenure for general managers under the standard form of contract; the role of the elected council in the appointment of senior staff; and the setting of remuneration for general managers.
- Equal Employment Opportunity could be removed if section 122B of the *Anti-Discrimination Act 1977* was amended to include local government
- Advertising provisions are too prescriptive, inflexible and outdated.
- Merit selection requirements for limited-term appointments are considered unnecessarily restrictive and onerous, and the time limit for temporary appointments of 12 months was too restrictive.
- Provisions relating to staff protection in the event of council amalgamations - some submissions proposed that the current time limit for retaining staff after amalgamation should be reduced from three years to one year. There were differing views on this matter. Local employment, particularly in rural areas, is very important to the economy of the local community and therefore the three year protection should be maintained. This matter is being considered by the Independent Panel.

Observations

There are a number of provisions of the Act impacting employment. This discussion focuses solely on those provisions where specific issues have been identified in submissions.

There appears to be confusion and lack of clarity around the specific responsibilities of the council in relation to determining the organisation structure of council.

Some councils interpret their responsibilities as being more strategic, in terms of determining the functions that council should perform, whereas others interpret their role as being more operational and are of the view that they should determine every position within the organisation including being involved in recruitment or creating positions to support elected representatives.

There is some confusion regarding the determination of senior staff positions. The determination is based on two criteria, roles and responsibilities and remuneration. The Act states that *“a council must determine those positions within the organisation structure that are senior staff positions”*. However, there is uncertainty as to whether the council is obliged to deem all positions that meet this criteria as senior staff positions.

There is a perception that it is open to council to treat a position as non-senior even if it meets the specified criteria. From a public policy perspective, where a position carries certain responsibilities and receives a high level of remuneration, it should be classified as a senior position and include a higher level of accountability than would normally apply to council staff.

The Act prescribes that *“the general manager may appoint or dismiss senior staff only after consultation with the council”*. The interpretation of consultation varies from council to council, with some extrapolating that the council decides whether a person is appointed or dismissed.

There is a requirement in the Act that the general manager report annually on the contractual conditions of senior staff. However, given that senior staff should be on standard contracts and remuneration is reported in the annual report, it is unclear why a specific report is necessary.

The Act prescribes that *“the general manager is to designate a member of staff as the public officer”* to deal with requests for information among other responsibilities. Given the range of external regulatory responsibilities a council is required to satisfy, such as public access to information (GIPA) and coordination of nominated disclosures, it should be open to each council to determine how it deals with these responsibilities.

The Act contains a specific part relating to EEO. However, as EEO should be incorporated into the council's Workforce Strategy and is covered by other legislation including the *Anti-Discrimination Act 1997*, to avoid duplication, EEO may be better incorporated into an IPR Framework section.

The Taskforce notes that, as part of the Destination 2036 Action Plan, a working party to examine general manager and senior staff contracts has been established consisting of representatives from the Division of Local Government, Local Government NSW, Local Government Managers Association, United Services Union, and the Development and Environmental Professionals' Association.

Taskforce Proposal

3.3.3 The Taskforce proposes:

- (i) the strategic responsibilities of the council be clearly separated from the operational responsibilities of the general manager in determining the council's structure and be aligned with IPR by:
 - the general manager being responsible for determining the organisation structure and for recruiting appropriately qualified staff necessary to fulfill each role within the structure
 - the council being responsible for determining those services and priorities required and to provide the resources necessary to achieve the Council's Delivery Program, and
 - the general manager being responsible for the employment of all staff and there be no requirement for the general manager to consult with the council in relation to appointment and dismissal of senior staff.
- (ii) all positions meeting the criteria as a senior staff position be treated as such, appointed under the prescribed standard contract for senior staff, identified as a senior staff position within the organisation structure, and the remuneration be reported in the council's annual report.
- (iii) in line with the principle of reducing prescription:
 - each council to determine how it deals with regulatory responsibilities that fall outside of the Local Government Act, rather than prescribe the appointment of a Public Officer; and
 - the EEO provisions be incorporated with the IPR processes and procedures
- (iv) the current prescription in the Act relating to the advertising of staff positions and staff appointments be transferred to regulation or to the relevant industrial award.

3.3.4 Formation and Involvement in Corporations and Other Entities

Background

From time to time councils may wish to form a company or other entity to provide council services, to manage resources, or as a means of sharing resources between councils.

Section 358 of the Act prevents councils from forming or participating in the formation of a corporation or other entity except with the consent of the Minister and subject to conditions that the Minister may specify.

The definition of other entities is extremely broad and includes "*any partnership, trust, joint venture, syndicate or other body (whether or not incorporated)*" (s.258 (4)).

In granting approval, the Minister must be satisfied that the formation of a company or other entity is in the public interest. The Act does not include guidance in respect of the public interest. However, the Division of Local Government has issued a circular addressing this issue.

Observations

Concerns were raised regarding the requirement to obtain ministerial consent to form corporations and other entities; the constraints on council ability to enter into resource sharing or shared services arrangements; and the inhibiting of investment and/or participation in initiatives such as research partnerships; for example, Co-operative Research Centres are often established as a corporation; infrastructure investment such as recycled water schemes; and participation in ROCs.

The feedback did not specifically address why the requirement to obtain ministerial consent posed such an obstacle to council activities. The Taskforce understands that very few applications are made to the Minister each year (on average only 2-4) of which approximately 85% are approved.

A corporation or other entity formed by council will not be subject to the same legislative framework and level of public scrutiny and accountability as the council. Furthermore, employees of such an entity will not be covered by the same employment conditions as employees of councils.

It is reasonable that councils are subject to a degree of scrutiny when deciding to form a corporation or other entity. The Taskforce notes that, while under the current regime councils are required to obtain the consent of the Minister, there is no obligation to consult with the community on these proposals. There would appear to be an opportunity to include such proposals in the IPR process.

The Taskforce acknowledges that there may be times when it is in the public interest for councils to form corporations, for example, to facilitate collaboration, resource sharing or shared services between councils.

The Taskforce is aware that the Independent Panel is considering options for governance models and structural arrangements for local government. It is reasonable to expect that options proposed by the Independent Panel may require councils to be involved in new entities, which will need to be supported by the Act.

Taskforce Proposal

3.3.4 The Taskforce proposes to defer further consideration of this component of the legislation until the work of the Independent Panel is completed.

3.3.5 Protection from Liability

Protections from liability

A council may sue and be sued subject to the limitations and protections contained in the Act (e.g. section 731 which limits the personal liability of councillors and others when acting in good faith).

The Taskforce is satisfied that these provisions are currently working well. One suggestion for change relates to a request for exculpation from liability of councils and council officials for actions taken relating to sea level change. It is understood that this matter is part of broader coastal issues currently under consideration by the NSW Coastal Ministerial Taskforce.

3.3.6 Code of Conduct

Background

The Code of Conduct is an important element of councils' governance framework. It underpins the principle of councils maintaining best practice public governance and acting fairly, responsibly, ethically, and in the public interest. The Taskforce received a number of submissions regarding the Code of Conduct, most of which related to the inappropriate use of the Code.

Observations

Legislative amendments have recently been made to the councillor misconduct provisions of the Model Code of Conduct with the purpose of:

- giving councils greater flexibility to informally resolve less serious matters. It provides larger penalties to help deter ongoing disruptive behaviour and serious misconduct.
- introducing greater fairness. The investigation of all complaints about councillors and general managers is now entirely managed by an independent conduct reviewer.
- addressing misuse of the code. Minor changes have been made to standards previously covered by the code.
- introducing clearer procedures to help make the code easier to understand and use.
- giving the Division of Local Government more options to directly manage administration of the code and address its misuse. The Division and the Local Government Pecuniary Interest and Disciplinary Tribunal will be able to impose stronger penalties for repeated misconduct.

It is expected that these changes will assist councils progress the core business of serving their communities and will address most of the issues raised with the Taskforce at workshops and in submissions.

Taskforce Proposal

3.3.6 The Taskforce is not proposing any changes to the conduct provisions of the Act.

3.3.7 Pecuniary Interest

Background

As with the Code of Conduct, the pecuniary interest provisions of the Act are designed to support the principle of best practice governance, councils acting ethically, and in the public interest. The provisions support the principle of open, unbiased and accountable government.

Observations

The Taskforce received little if any feedback on these provisions. However, the current provisions are prescriptive and in some instances difficult to understand.

Taskforce Proposal

3.3.7 The Taskforce proposes that:

- (i) the pecuniary interest provisions be reviewed to ensure they are written in plain language, easily understood and any unnecessary red tape removed.
- (ii) consideration be given to utilising available technology to assist with the submission and maintenance of pecuniary interest disclosures and to facilitate appropriate access to this information.

3.3.8 Delegations

Background

Delegations of authority are an important component of the governance framework of any corporate entity. Councils may, by resolution, delegate to the general manager or any other person any of the functions of council other than those functions set out in section 377 of the Act.

Observations

It was evident from the workshops and submissions that the ability of council to delegate functions is essential for its efficient operation. However, suggestions were received that the list of matters precluded from delegation was in need of review to ensure that they aligned with the relevant roles and responsibilities of the council's governing body and general manager.

In some circumstances it was suggested the current delegations are hampering the efficient operation of council. Examples given included the limitations on delegations of:

- “a decision under section 356 to contribute money or otherwise grant financial assistance to persons” (s377(1)(q)) is not reflective of the risks associated with these decisions; and
- the acceptance of tenders (s377(1)(i)) – see the discussion on Procurement, section 3.3.10.

Taskforce Proposal

3.3.8 The Taskforce proposes that the provisions in the Act relating to delegations be reviewed to ensure they are streamlined; written in plain language; and are reflective of the roles and responsibilities of the council and the general manager to facilitate the efficient, effective and accountable operation of local government.

Financial Governance

3.3.9 Financial Management

Background

In broad terms there are three places that the financial management and governance of councils is regulated within the current Act.

- IPR (Chapter 13, Part 2 and associated guidelines) – councils are required to have certain planning documents which may (either wholly or in part) be financial planning tools. These include the resourcing strategy (including long term financial plan), delivery program and operational plan.
- Financial Management (Chapter 13, Part 3) – Provisions relating to council's funds, accounting records, financial reporting and auditing, which are usually prescriptive and focused on process outcomes and requirements.
- How Councils are Financed (Chapter 15) – Provisions focusing on the various aspects of council finances, such as rates, user charges, fees, concessions, which at times provide a high level of process detail.

The Taskforce received substantial feedback on the issues of rates and in particular rate pegging, and other matters such as concession for charities and religious bodies and the like, the setting of fees and charges, and audit and risk management.

The Taskforce acknowledges these comments and notes the concern regarding rate pegging and the mechanisms associated with seeking special rate variations. However, the Taskforce is aware the Independent Panel is considering these matters and fiscal responsibility generally. Accordingly, consideration of these matters has been deferred pending the finalisation of the Independent Panel report.

Observations

The current financial governance and management provisions create a highly prescriptive, process driven framework that is not necessarily clearly aligned with IPR.

For example, provisions relating to public notice of certain types of fees and charges exist outside of the context of the community engagement that occurs under the auspices of IPR. Linkages occur in practice because of the use of various guidelines but there is scope for much closer integration.

It is not clear the extent to which the current framework reflects financial best practice. For example, the current provisions require councils to have prepared and finalised their financial statements within four months of the financial year. Many jurisdictions now consider three months a more realistic benchmark.

Some councils argue that the restrictive nature of the provisions being based around process are an impediment to best practice financial management. There may be merit in the view that, by focusing on process, the financial and risk management goal of the provisions, is overlooked.

Because the legislative framework is largely concerned with financial process it is difficult to assess the extent to which the legislation improves financial risk management. Compliance with the legislative provisions does not necessarily ensure that robust financial management systems are in place.

An alternative model would see a greater focus on establishment of principles of financial management and governance, with detailed provisions located in other regulatory instruments.

Although such an approach is only on financial risk and management, a systems approach may be taken to other issues including regulatory management, council governance, and the interaction between the various sections of a council. It could also enable more effective monitoring of council performance.

Taskforce Proposal

3.3.9 The Taskforce proposes:

- (i) there be greater scope for a focus on principles and the definition of financial systems/minimum standards within a new legislative framework and for assimilation with the mechanisms of IPR in line with frameworks proposed for other parts of the legislation.
- (ii) there be a rebalancing of the regulatory focus of the legislative framework towards systems and risk management rather than process prescription.
- (iii) to await the Independent Panel work on many of the issues associated with fiscal responsibility including: rating issues; asset and financial planning; rates and charges; management of expenditure; and audit practices before recommending legislative positions on these matters.

3.3.10 Procurement

Background

Councils are responsible for procuring a wide range of services and infrastructure to fulfil their roles and functions. Being responsible for the expenditure of public monies it is essential that the principles of efficient, effective and economic operations are observed and underpinned by the need for councils to be open and accountable and to act fairly, responsibly, ethically and in the public interest.

The Act and Local Government (General) Regulation (the Regulation) currently require councils to undertake tenders for contracts for the supply of goods and services above a threshold of \$150,000.

The current regulatory approach is highly prescriptive, reflective of the compliance focus of the Act. The provisions in the Regulation are primarily aimed at ensuring impartiality, confidentiality and transparency in the tendering process.

The Act and Regulation apply a one size fits all model, which limits councils from taking a strategic, risk based approach to procurement.

Furthermore, the Act provides for councils acting as individual entities rather than in collaboration with a broader local government system in which various partners, including the State Government and regional organisations of councils (ROCs), potentially have roles.

Observations

Consultations and submissions confirmed it is important that local councils are accountable, open and transparent in the way in which they conduct their business, and that the risks of fraud and corruption are minimised.

Key issues raised in relation to the current tendering provisions are:

- the low level of the current tendering threshold of \$150,000;
- obstacles to councils utilising modern technology in tendering processes resulting in decreased efficiency and effectiveness and avoidable costs to councils. For example, advertising requirements were identified as onerous and costly;
- constraints on the ability of councils to engage in regionally-based procurement arising from the delegation provisions of the Act;
- concerns that tendering should be an operational matter and reported to Council on an exception basis;
- the level of prescription in the Act which perhaps should be moved into regulations, codes or guidelines; and
- the possible benefits of aligning local government procurement with the State Government procurement framework.

Other issues with the current tendering provisions include:

- a 'one size fits all' approach, which is seen as limiting councils' ability to adopt flexible and strategic approaches to procurement, and may allow smaller councils to undertake procurement for a segment of their budget without any accountability measures;
- limited accountability for procurement undertaken by councils:
 - where the contract value is below the tendering threshold (but may still be of material value); and
 - where the circumstances are exempt under the provisions of the Act (such as public private partnerships, extenuating circumstances, remoteness of locality – see s55(3) for list of exemptions);
- lack of a requirement for a broader system of financial management that requires councils to take into account risk management and best value procurement principles, and providing services in-house (for example capital expenditure on infrastructure), providing financial assistance, imposing appropriate fees for services, and the disposal of valuable land, plant or equipment.
- the current delegation provisions constrain the ability of councils to:
 - delegate the function of accepting tenders as an operational matter; or
 - undertake regional procurement, via for example ROCS (due to the need for each council to separately approve tenders, and limits on councils' ability to form companies)

It is evident that the current procurement framework is highly prescriptive, inflexible and does not support the modern operations of councils.

A review was undertaken of procurement frameworks utilised in other jurisdictions, in particular frameworks use in Queensland and Victoria. Consideration has been given to the application of broader financial management principles to procurement. For example, in Queensland, councils are required to adopt a system of financial management, and to have policies that take into account risk management and market assessment.

This could form the foundation of a principles-based enabling approach to procurement with a medium level of regulation, which the Taskforce considers would be appropriate having regard to the public desire to have secure accountability measures for the spending of public money. Consideration could be given to linking the level of regulation imposed on councils to some form of accreditation.

Victorian regulation requires risk management to be taken into account in council procurement policies. Furthermore, Victoria has adopted some best value provisions in their local government regulation, which require councils to comply with best value principles in the provision of services such as:

- meeting quality and cost standards developed by each council for the provision of services;
- being responsive to the needs of the community, including regularly consulting and reporting to the community on the services it provides
- being accessible to the community; and
- achieving continuous improvement in the provision of services for the community.

In applying best value principles, Victorian councils must also take into account factors including the need to review services against the best on offer in both the public and private sectors and an assessment of value for money in service delivery (*Local Government Act 1989* (Vic), Part 9, Division 3, ss208A-J).

Taskforce Proposals

3.3.10 The Taskforces proposes:

- (i) the adoption of a more principles-based enabling approach to procurement combined with a medium level of regulation designed to ensure support of the principles of value for money, efficiency and effectiveness, probity and equity, and effective competition.
- (ii) in relation to the current tendering threshold of \$150,000 rather than the legislation setting a dollar value threshold a more flexible principles-based approach be taken to councils setting the threshold based on risk assessment of the proposed procurement.
- (iii) the delegations section of the Act be reviewed to facilitate councils entering into collaborative procurement arrangements such as via ROCs and allowing councils to delegate procurement to general managers with a 'report back' mechanism.
- (iv) any regulation of council procurement support councils utilising available technologies that can assist with efficient, effective and economic procurement processes that are accessible to all relevant stakeholders and are fair, open and transparent.

3.3.11 Capital Expenditure Framework

Background

Capital expenditure accounts for a significant proportion of the budget of all councils in NSW and is an important category of procurement and asset management. The Act provides a broad capital expenditure framework for councils constructing, renovating or acquiring assets and currently ranges from high level strategic oversight through the IPR provisions to sections governing the oversight of certain capital expenditure processes.

Capital expenditure provisions are generally prescriptive, detailed and compliance-focused while there are requirements under IPR to develop an asset management strategy and asset management plans (s403), section 23A guidelines on capital expenditure reviews, and provisions of the Act and Regulation relating to tendering (s55).

Observations

The following issues with the current capital expenditure regime have been identified:

- The capital expenditure provisions in the Act and the relevant guidelines are not currently well integrated.
- The section 23A guidelines are not mandatory and councils have been known to commence capital expenditure projects prior to sign off of completion of the capital expenditure review by the Division of Local Government.
- The monetary and rate revenue thresholds in relation to capital expenditure projects do not take into account capability of councils or the size of their capital budget.
- It is not clear whether the current regulatory framework is helping to improve council's management of the risk or delivery of capital expenditure projects to best ensure consideration of probity, transparency and accountability in the expenditure of public funds for public purposes.

Asset management across the local government sector is mixed with a high degree of divergence in terms of capability and capacity. This includes matters of planning and managing capital procurement.

There is a strong desire at all levels of government for improved infrastructure management and delivery within councils, as evidenced by the introduction of mandatory asset management strategies, government investment in the Local Infrastructure Renewal Scheme and the current infrastructure audit.

Some councils are taking only a compliance-based approach to asset strategy development and planning, possibly due to capacity and capability constraints. The Taskforce understands that these matters are being considered as part of the infrastructure audit.

An alternative may be to better enable councils to leverage off IPR to ensure a clear focus on asset planning, community needs, and whole of asset life costs coupled with assisting councils place greater rigour around their capital procurement and expenditure systems. This could help ensure that councils have the requisite skills to undertake procurement projects and the financial capacity to manage projects and ongoing maintenance of the assets.

Such a model would cast the State in the role of assisting councils build capability and capacity while ensuring appropriate risk management systems are in place.

Taskforce Proposals

3.3.11 The Taskforce proposes:

- (i) that a capital expenditure and monitoring framework be developed to enable the appropriate management of risk by councils. This framework should be tailored to risk levels, including significance of the project (including materiality and whole of life costs) and not based on arbitrary monetary thresholds or procurement vehicles.

3.3.12 Public Private Partnerships

Background

As councils are urged to be more innovative and face increasing expectations to provide additional services and infrastructure, Public Private Partnerships (PPPs) are considered one mechanism by which councils can meet these demands.

PPPs often involve significant capital expenditure and the formation of entities which are governed by section 358 of the Act discussed above. However, they have one significant distinguishing factor as they “*involve an arrangement between a council and a private person to provide public infrastructure or facilities*” (s400B(1)(a)).

The Act defines PPPs as “*arrangement between a council and a private person for the purposes of: (a) providing public infrastructure or facilities (being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement), or (b) delivering services in accordance with the arrangement, or both*”.

As a departure from traditional council activities involving significant financial investment, they are considered high risk activities which need to be managed accordingly.

The PPP provisions in the Act (s400B - N) and associated mandatory guidelines were enacted in 2006 in response to the recommendations from the Public Inquiry into Liverpool Council and the Oasis development. The provisions are particularly prescriptive and detailed.

Chapter 12, Part 6 and Schedule 3 to the Act defines PPPs, requires councils to follow the procedures set out in the Guidelines and establishes the Local Government Project Review Committee (the Committee).

The Committee is not responsible for assessing the merits of the project as this responsibility rests with the council. The primary role of the Committee is to ensure that the project risks are clear and well understood by all parties.

The Division provides assistance to councils in determining whether proposed projects fall within the definition of a PPP.

Since the introduction of the PPP provisions in the Act only six significant PPPs have been assessed by the Committee. On average only two to three non-significant PPPs are submitted to the Committee for assessment per year.

Observations

PPP legislative requirements are considered to be onerous and an unnecessary constraint on councils’ ability to enter into commercial operations. They are viewed as causing costly project delays, stifling innovation and inhibiting flexibility.

There is an extremely low use of PPPs. This may be a reflection of the onerous provisions in the Act and supporting documents but the Taskforce has no evidence to support this statement.

It is also possible that the low use could be attributed to private partners not being interested in investing in council infrastructure projects which are relatively small and with a relatively low return on investment and sometimes a high degree of political risk.

There is no direct linkage in the legislation between PPPs and IPR. Given the significant nature of these projects it would seem appropriate that plans or proposals to engage in such activities be included in a council’s Delivery Program and Long Term Financial and Asset Management Plans.

The Taskforce is of the view, given the significant risks that can be associated with PPP projects, that it is appropriate they continue to be subject to regulation.

Taskforce Proposal

3.3.12 The Taskforce proposes that PPP projects continue to be subject to regulation and aspects that could be streamlined or simplified be identified and mechanisms for ensuring PPPs be considered for inclusion in the IPR framework.

3.3.13 Acquisition of Land

Background

A council can acquire land for the purpose of exercising any of its functions. Acquisition can be by agreement or compulsory process. The Act gives the council power to apply to the Minister for Local Government to proceed with a compulsory acquisition.

Currently, with the exception of two councils that act as Water Authorities (Gosford City and Wyong Shire Councils), the only Acts under which a council or county council can compulsorily acquire land are the Local Government Act and the *Roads Act 1993*.

All applications to acquire land or an interest in land under either Act are assessed against the legislation and supporting guidelines by the Division of Local Government before a recommendation is made by the Minister to the Governor. Considerations include whether efforts have been made to negotiate with the owner, the acquisition is for a valid public purpose, and whether there is resale involved. Compensation payable is determined by the process under the *Land Acquisition (Just Terms Compensation) Act 1991* in which the Minister has no role.

Observations

Two main issues were raised with the Taskforce during the first round of consultations. The first related to the process with a few submissions suggesting the process could be streamlined and the Director-General of the Department could grant approvals.

The second issue related to restriction on compulsory acquisition of land for resale, with suggestions that resale should be permitted in a broader category of circumstances.

It is essential that councils, like Federal and State government agencies, retain sufficient powers to compulsorily acquire land for the efficient and effective delivery of services and infrastructure in the public interest. Local Environmental Plans frequently contain provisions for councils to acquire land.

Because the process of compulsory acquisition overrides the private rights of a landholder it is important for there to be adequate checks and balances to ensure the power is used appropriately.

The Taskforce notes that the Act does not provide guidance in respect of a 'council function or public purpose'. However, the Division of Local Government has provided guidelines to assist councils. Moreover, in the current Act and guidelines there is no linkage of acquisition of land to the IPR framework. Given that acquisition of land can involve significant capital expenditure it would seem appropriate that proposals for compulsory acquisition are given due consideration at the time of developing the community strategic plan, asset management, and long-term financial plans.

Taskforce Proposals

3.3.13 The Taskforce proposes:

- (i) no change at this time to the acquisition of land provisions as they remain essential to council's continued service and infrastructure delivery, are generally working well and there are no strong reasons to support change.
- (ii) council plans for the acquisition of land be linked with the IPR processes, and in particular the expressed opinion of the community in the community strategic plan on the need for additional public land or the sale of public land, be included in Delivery Program provisions.

3.3.14 Public Land

Background

Classification of Public Land

Chapter 6, Part 2 of the Local Government Act requires that all council owned land is classified as either community or operational land by the adoption of a plan of management. The classification and reclassification of land will generally be achieved by either a local environmental plan (LEP) for changing from community to operational land or by resolution of the council when first classifying land.

The classification of land impacts on how councils can use the land and the ability to dispose of the land. In particular, councils must adopt a plan of management for all community land and may not dispose of community land without reclassifying it as operational. Moreover, councils cannot lease or licence community land without the approval of the Minister for Local Government if the term of the lease or licence will be greater than five years and objections have been lodged against the proposal.

The process by which community land can be reclassified as operational land, and perhaps then sold by the council, is by the making of an LEP following a public hearing.

In late 2012 the Department of Planning issued a policy statement that effectively delegated to councils the ability to make LEPs in certain circumstances. Of particular significance is the ability of councils to now complete the process to reclassify community land to operational land where it is supported by an open space study.

Under the Local Government Act, councils are required to prepare plans of management for all community land they own. Additionally under the *Crown Lands Act 1989*, councils are required to prepare management plans for certain categories of Crown Land for which they are Trustee-Manager. The processes to be followed for these two plans differ.

Use of Community Land

Some applications for the lease or licence of public land or other interests in land (classified as community) require the approval of the Minister for Local Government if the term of the lease or licence will be greater than five years and any objections have been lodged against the proposal.

Among other things, the Act requires a report to be obtained by the Division of Local Government from the Director General of the Department of Planning and Infrastructure as part of the consideration of the application.

This is both a process and a merit-based assessment procedure. It has been suggested there is often duplication of processes by the State agencies. An average of three applications per year are assessed by the Division and this aspect of the process can be rationalised to reduce the regulatory burden.

Observations

From the consultation feedback it was generally agreed it is an important principle to ensure that public lands are adequately safeguarded as a community asset. Consequently, there needs to be a robust management process in place to ensure that councils are accountable for managing public land.

However, it was evident from the workshops and written submissions that the current Act provisions relating to public land classification and management are unnecessarily prescriptive, costly, onerous, in need of review and inconsistent with the requirements relating to the management of Crown Land (reserve trusts) by councils.

Suggestions to address these issues included transfer of community land management to a single new Act covering all public lands; better integration of public land management under the IPR framework; remove excess prescription from the Act and focus on the principles for the management and safeguard of community assets; simplify the reclassification process; and complement the Environmental Planning and Assessment Act and the Crown Lands Act.

It is evident that the current processes for land management are complex and inconsistent. Ideally, a more simplified and outcomes-based approach should be adopted.

Three (3) issues examined by the Taskforce based on consultation and submissions are:

Classification Process - a local environmental plan that reclassifies community land as operational land may make provision to the effect that, on commencement of the plan, the land, if it is a public reserve, ceases to be a public reserve, and that the land is by operation of the plan discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land. This is a valuable provision as it regularises any inconsistencies in the use of the land after re-classification.

At the same time the new Planning System may, when introduced, not facilitate further ad-hoc amendments to LEPs. This may require further review after the planning legislation has been amended.

Leases and Licences - the original intention of the community land classification was to restrict the commercialisation of land for private use and for extended lease periods. However, leases and licences can be renewed every 5 years to the same operator and rolled over every five years. At the same time the 5 year period is regarded as insufficient in certain cases to allow reasonable investment of capital in the facility.

A new Local Government Act should adopt a more consistent, simplified approach to leases and licences of community land, particularly in relation to ministerial approval requirements, giving of public notice, the objection process, short-term uses of land, and terms of agreement.

Councils could have greater freedom to lease or licence community land without the need to obtain the consent of the Minister for Local Government or only where a significant number of objections by the community to the proposal are received. The need for a separate report to be obtained from the Department of Planning on applications could be removed.

After the initial 5 year term a compulsory expression of interest or tender process to re-lease the community facility for a further term could be considered. The proposal would be notified and exhibited for 28 days and if five or more objections are received then approval might be subject to Director General concurrence.

Plans of Management - the Taskforce believes that the requirements to prepare statutory plans of management for community land could be streamlined and only require councils to prepare and maintain statutory plans of management for the most valuable or sensitive areas of community land. Other less significant areas could be managed under an alternative, non-statutory regime. In this way, council's obligations could be managed more efficiently, thereby reducing the regulatory burden while maintaining accountability.

The Taskforce also observes that much of the detail in the Act about plan making could be moved to a regulation or practice note.

Crown Lands' has indicated it is supportive of measures to streamline and harmonise the plan of management and management plan provisions of the two Act regimes. To avoid legislative duplication, an approach might be for all council land responsibilities to continue to be dealt with under the Local Government Act, with the Crown Lands Act to reference the Local Government Act statutory plan of management provisions for those parcels of Crown land under council control. This may require a cognate amendment to the Crown Lands Act.

Taskforce Proposals

3.3.14 The Taskforce proposes:

- (i) the current processes for council land management, being complex and inconsistent with the Crown Lands regime, be simplified and complementary.
- (ii) the Local Government Act:
 - require councils to strategically manage council-owned public land as assets through the IPR framework
 - balance reasonable protections for public land use and disposal where the land is identified as having significant value or importance
 - end the classification regime of public land as either community or operational land and instead, require the council resolution at the time of acquiring or purchasing land to specify the proposed use or uses

- provide that a proposed change in the use or disposal of public land, including consultation mechanisms, should be dealt with through the council's asset management planning and delivery program,
- retain the requirement for a public hearing to be held by an independent person where it is proposed to change the use or dispose of public land identified as having significant value or importance. The results should be reported to and considered by the council before a decision is made and proposals should be addressed through council's community engagement strategy.
- recognise the LEP zoning processes and restrictions applying to council owned public land
- review the prescribed uses to which public land may be applied to accommodate other uses appropriate to the current and future needs of the community
- cease the need for separate plans of management for public land to be prepared and maintained, and in lieu, utilise the asset management planning and delivery program
- cease the need for a separate report to be obtained from the Department of Planning and Infrastructure where proposed leases and licences of public land are referred to the Minister for Local Government for consideration.

Regulatory Functions

3.3.15 Approvals, Orders and Enforcement

Background

The Act provides councils with powers to undertake regulatory functions by listing the local activities that council may regulate, the means of their regulation, and the manner by which regulations can be enforced. The regulatory procedures given to councils by the Act are generally detailed, prescriptive and inflexible.

There are two broad regulatory functions of councils:

- *Approvals*: Prescribed activities by persons which councils must approve.
- *Orders*: Prescribed areas where councils can issue an order for an activity to cease or property be removed or cleaned.

A council may adopt a Local Approvals Policy (LAP) and a Local Orders Policy (LOP). A LAP can specify the circumstances in which a person is exempt from the need to obtain an approval to undertake a particular activity and the criteria that a council must consider when determining whether to grant an approval. An LOP can specify criteria that must be taken into account in determining whether or not to serve an order.

Under the current regulatory framework, councils must implement mandatory standards when undertaking regulatory functions to manage risk, for example, approval of sewerage works. The level or nature of mandated activity varies between regulatory processes. Sometimes the Act prescribes how often council is to undertake a regulatory function. Moreover, it may prescribe fees and charges, regulatory process or other requirements.

Furthermore, councils have a level of discretion in how actively they perform regulatory functions under the Act (e.g. serve an order to clean premises). The level of discretionary activity depends on available resources and community priority, often expressed through the IPR framework.

Observations

The legislative framework for approvals is very ad hoc. Approvals have been added to the legislation over time creating inconsistency concerning the level of prescription for each activity requiring approval. For instance, the Act gives very little guidance for implementing section 68 approvals, such as water supply work or management of waste. However, the procedure for approving filming is dealt with in great detail by Division 4 of Chapter 7.

Offences are currently stipulated in Chapter 16. Offence provisions are first stated quite broadly (for example, failure to obtain approval) and then move into specific subject areas (for example, parking and street drinking offences).

Councils may also regulate or prohibit certain activities occurring in public places by erecting notices on the land. Failure to comply with the terms of a notice is a breach of the Act.

Consultation feedback was mixed and raised the following issues:

- the approvals regime is too prescriptive, unnecessarily complicated (particularly in relation to public land) and inconsistent with consents pursuant to the *Environmental Planning and Assessment Act 1979*.

- there is some duplication of approval responsibilities between Acts and approval powers, such as those relevant to public roads, which could potentially be transferred to the *Roads Act 1993*. Other approvals might be better located in other legislation.
- the provisions relating to orders are generally working well. However, the list of areas attracting an order could be reviewed with the purpose of identifying those areas that could perhaps be better dealt with under other legislation, and consider further specifications that could be included such as matters in relation to unsightly or derelict buildings and companion animals.
- the process of issuing orders is unnecessarily complex and the procedure could be simplified.
- the enforcement powers are not always sufficient to implement orders. For instance, there are issues with the definition of derelict buildings for the purposes of issuing demolition orders and where Council may not be able to issue a demolition order where the building is dilapidated, unsafe and unsightly.

The Taskforce notes that the Independent Pricing and Regulatory Tribunal (IPART) is currently conducting a Red Tape Review of Local Government Compliance and Enforcement and is considering regulatory issues and how regulatory burdens can be reduced. A final report is due by 30 June 2013.

The prescriptive nature of the approvals and orders procedure is not consistent with the Terms of Reference of the Taskforce to recommend a streamlined Act that builds councils' regulatory capability.

The approvals processes that deal with setting fees, objections, requests for more information, concurrent approval by other ministers, staged approvals, conditions, reviews, renewals, appeals, etc is highly prescriptive. The current approval process leads to complaints of excessive red tape especially from people that are operating across council boundaries. The legislative framework for approvals could be more risk-based with greater clarity provided on how approvals and orders are to be treated under the legislative framework. This could lead to greater understanding of the regulatory framework.

The orders processes are highly prescriptive, specifying matters such as the need to give reasons, give notice, hear objections, give time to comply, may specify standards/criteria, may modify or revoke orders, appeals, etc. This is understandable given the necessity to afford procedural fairness. The Taskforce has heard that the enforcement powers for orders can sometimes be insufficient.

Miscellaneous regulation has been placed in the Act over time, creating regulatory gaps that have increased risk, and regulatory overlaps that have increased burden. For example, approvals for water use and management are dealt with under the *Water Management Act 2000* (NSW), but still require council approval under section 68 of the Local Government Act. See also the discussion under Water Management section 3.3.16.

Some jurisdictions allow for local laws, where councils may implement such laws to exercise regulatory functions. For example, Victorian and Queensland councils may introduce local laws on any topic for which they have power. Intended local laws must be advertised and public submissions considered before implementation.

This process can be considered as similar to the process of a NSW council adopting an LAP or LOP. However, these laws differ from the approvals and orders process in NSW because local laws in other jurisdictions can be enacted detailing prescriptive regulatory procedures on a wide breadth of topics. Therefore, the local law model does not align with NSW Government commitments to reduce red tape and the objectives of the current IPART review.

It would appear that few councils have considered it necessary to adopt LAPs and LOPs to deal with issues of local significance. Some councils are stipulating an approvals and orders process through their compliance and enforcement policies. This raises the question as to whether there is a need to retain the ability of councils to make LAPs and LOPs.

Maximum penalties for offences under the Act have not increased since the legislation was enacted in 1993 and therefore may have lost relativity to the seriousness of the offence. Penalty notice amounts prescribed by regulation are also in need of review.

Given the nature and purpose of orders, it is reasonable to expect that they be carefully regulated to ensure that due process is followed and that the requirements of procedural fairness are met.

Councils must always implement mandatory statutory requirements for issuing approvals and orders under the Act. However, the introduction of IPR has given councils a strategic function allowing discretion to determine community priorities and to manage council resources in order to meet mandatory statutory requirements. This discretionary capacity should be encouraged in the regulatory framework.

For a discussion of approvals applying to water supply, sewerage and stormwater drainage work, recycling, management of waste water, etc, see the Water Management section of this paper (3.3.16).

Taskforce Proposals

3.3.15 The Taskforce proposes:

- (i) regulatory provisions be reviewed to ensure that the Act provides guidance on regulatory principles but contains flexibility and less prescription in their implementation, with statutory minimum standards or thresholds the council must meet, and councils discretionary 'on-the-ground' functions.
- (ii) within this framework, the prescriptive processes of approvals and orders be streamlined and, subject to risk assessment, be placed into regulations where possible, allowing the Act to focus on high priority areas and principles.
- (iii) certain approvals be repealed or transferred to other legislation, such as the installation of manufactured homes and the operation of caravan parks and camping grounds. Installation of domestic oil and solid fuel heating appliances should be transferred to the Environmental Planning and Assessment Act; approvals for filming activities on public land be deleted or transferred to other legislation; approvals for amusement devices be transferred to health and safety legislation; and approvals for engaging in activities on public roads be transferred to roads and transport legislation.
- (iv) given that maximum penalties have not increased since 1993, penalties for offences in the Act and Regulation be reviewed to ensure they are proportionate to the seriousness and nature of the offence, and act as a deterrent to re-offending.
- (v) to have regard to the findings and recommendations of the reports by IPART as they affect local government that are due mid-2013.

The Taskforce invites comments as to whether there are currently activities requiring approval that are low-risk or redundant and therefore can be removed from the legislation.

3.3.16 Water Management

Background

An important function undertaken by many local councils outside the Sydney metropolitan area is the management of water and sewerage services as local water utilities (LWUs). There are also several county councils constituted under the Local Government Act through which their constituent councils deliver water and sewerage services.

The Act confers powers on councils that are LWUs and county councils for water supply, sewerage and stormwater drainage works and facilities. Sections of the Act include: sections 56-66; 68-68A; 191A, 496A, 510A; 551-553A; 634-641. Sections 60 and 68 provide the framework and overview of wastewater recycling and sewerage treatment facilities by councils. The current framework does not consider some types of water activity that should be included, for example, recycled water and stormwater recycling.

There is overlap and duplication between the *Water Industry Competition Act 2006* and the regulatory arrangements for water recycling under the Local Government Act.

Observations

The Taskforce received several submissions regarding local government acting as LWUs.

The main thrust of these submissions is the need to rationalise the regulatory framework within which water utilities operate, to remove inconsistencies and overlap from the system, and to ensure clear regulatory roles and responsibilities.

The submissions propose various ways in which this can be achieved including the development of a specific Local Water Utilities Act.

A number of other reviews are currently examining questions relating to water management including:

- The Independent Panel is examining questions relating to water management as part of its work on enhancing regional collaboration and shared services. The Panel is considering the ability of councils to deliver services and infrastructure efficiently, effectively and in a timely manner in developing options to strengthen local government in NSW. Water supply and infrastructure are key components of councils' service delivery and infrastructure obligations – see 'Case for Sustainable Change' paper published in November 2012, section 5.5.
- A recent report by Infrastructure NSW highlights the need for reform of water utilities in regional and rural NSW. The model suggested for consideration was that advocated by the 'Armstrong/Gellatly' report. In its report and the NSW Government response, it was noted that this matter was being examined by the Panel.

- The NSW Office of Water is progressing with the review of LWUs following the ‘Armstrong/Gellatly’ report. Its focus is on water delivery to urban communities in non-rural and regional areas. One suggestion is that if it is decided that councils’ water management functions are to remain with local councils then the provisions should more likely be retained in the Local Government Act rather than transferred to the *Water Management Act 2000* or a separate new Act.
- The State Government is also undertaking a joint review of the *Water Industry Competition Act 2006* and the regulatory arrangements for water recycling under the Local Government Act. The Metropolitan Water Directorate is the lead agency and is focused on recycling and metropolitan water delivery. The Water Directorate has commenced the Urban Water Regulatory Review. The purpose is to review the Water Industry Competition Act and provisions within the Local Government Act to determine whether the Acts’ policy objectives remain valid, and identify and address issues arising in the wider regulatory framework.

A discussion paper “Urban Water Regulation in NSW”, released in November 2012 by MWD, canvasses the issues and proposes options, including whether targeted legislative amendments are the best way to address the issues raised, or whether more fundamental reforms are needed, for example, creating a single, consolidated legislative framework.

- The NSW Parliament’s Legislative Assembly Committee report into the Regulation of Domestic Wastewater, November 2012 is also relevant to the review of water management, including the capacity of councils through LWUs and county councils to continue to deliver services and the support required. The Committee requires the Government to provide its response to the report by 21 May 2013.

The current regulatory framework for water is complicated and involves several Acts and State Government agencies with varying responsibilities.

The Taskforce accepts that the Local Government Act was never envisaged to be used to the extent now required for addressing water supply, drainage, sewage and recycling issues. Over time, a greater demand has been placed on councils and the Division of Local Government for technical capacity or experience in managing such issues, in particular in relation to onsite sewage and recycled water advice, over which they have limited capacity.

Some of the more significant issues identified in the MWD discussion paper include exploring alternative regulatory models, understanding where regulatory responsibility for water management is best placed, and the technical challenges councils face in dealing with the complexity of water issues.

Taskforce Proposal

3.3.16 The Taskforce will await the report and recommendations of the Independent Panel on water management so that the regulation of water by local government in NSW can be further considered. This will involve the determination of appropriate governance structures for water and sewerage delivery in those areas currently serviced by LWUs and water county councils. It will also resolve whether the constitutional and regulatory arrangements for new structures should remain in the Act or relocated into a more appropriate integrated legislative framework.

3.3.17 Tribunals and Commissions

The Taskforce notes that the Government has constituted a new NSW Civil and Administrative Tribunal which is to consolidate the Local Government Pecuniary Interest and Disciplinary Tribunal into its operations.

It is noted that the Independent Panel is examining the issue of structures and boundaries and how best boundary changes might be facilitated.

The Taskforce notes that few submissions were made concerning the future role and function of the Local Government Remuneration Tribunal which sets the annual fees for mayors, councillors, county council chairpersons and members. While the Taskforce is of the view that the Tribunal is working well, consideration should be given whether to merge its operations with the Statutory and Other Officers Remuneration Tribunal.

3.3.18 Performance of Local Government

Background

During consultations the issue of autonomy of local government was raised on numerous occasions. The principle of “earned autonomy” was also discussed and the view expressed that local government should be entitled to make its own decisions based on a record of performance.

The performance of a council is outlined in a number of publications including:

- the annual report
- audited financial statement
- the End of Term report
- Division of Local Government Promoting Better Practice Review

From the annual report a range of performance statistics are provided to the Division of Local Government to enable production of the “*Annual Comparative Information on NSW Local Government Councils*” publication. In the Minister’s Foreword to the publication it is noted:

“The Local Government Act 1993 gives councils significant responsibility and autonomy in providing services for their communities. It is important that these services meet the needs of the local community and are provided effectively, efficiently and equitably.

This publication provides comparative information on the performance of all local councils in NSW. It is designed to help both the community and councils assess the performance of their council across a broad range of activities.

Observations

Section 404 of the Act requires the publication of an annual report and the Local Government (General) Regulation outlines the issues to be included in the annual report.

The Taskforce seeks comment on whether the information contained in the Comparative Performance publication provides a true comparison of performance of local councils and whether further points of comparison should be made.

The performance of general managers and senior staff is required to be reviewed periodically under the standard contract of employment.

Community performance is measured through the annual reporting on progress with implementation of the community strategic plan and whether community aspirations have been achieved over time in social, environmental, economic and civic governance strategies.

The performance of the council as the governing body is only measured every four years at election time.

The Taskforce expects the Independent Panel to generally examine performance aspects and so will consider any legislative provisions after considering any proposals that are put forward by the Panel.

Taskforce Proposal

3.3.18 The Taskforce will await the report and recommendations of the Independent Panel before considering any legislative provisions but invites submissions on whether the performance of local government and its constituent entities should be further monitored and reported.

CHAPTER 4 - CITY OF SYDNEY ACT

Background

The City of Sydney Act 1988 provides special provisions unique to the City as the centre of government and business in NSW. In most other respects the Local Government Act applies.

The main purposes of the Act are to:

- make provision for the non-residential voting franchise which differs from the qualifications applying in the remainder of NSW
- establish the Central Sydney Planning Committee and the Central Sydney Traffic and Transport Committee
- make provision for special environmental planning powers, including where development is uncompleted or for conditional donations to public space improvement projects

Elections

Part 3 of the Act specifies the framework for elections for the City Council and in particular, the non-residential voting franchises. The non-residential roll is required to be prepared by the NSW Electoral Commissioner in the manner provided. This roll lapses after each election. The Electoral Commissioner also prepares the residential roll for the City Council and for all other council areas.

Section 23 requires the Lord Mayor to be elected by the electors of the area. The Lord Mayor must also be a candidate for election as a councillor.

Section 24 provides that the provisions of the Act relating to the eligibility for people to vote at an election for the City Council also apply to referendums and polls conducted by the Council. Section 24(2) effectively provides that voting in a poll for the City Council is not compulsory.

Central Sydney Planning Committee

Part 4 of the Act provides for “Planning in the City of Sydney” by constituting the Central Sydney Planning Committee (CSPC). The Committee was established in September 1988 under section 33 of the Act and consists of 7 members:

- (a) the Lord Mayor of Sydney,
- (b) two councillors of the City Council elected by the Council,
- (c) four persons (two of whom are senior State government employees and two of whom are not State or local government employees) appointed by the Minister administering Part 4 of the Planning Act, each having expertise in at least one of architecture, building, civic design, construction, engineering, transport, tourism, the arts, planning or heritage.

The CSPC has the exclusive right to exercise the functions of the City Council in relation to the determination of applications for major developments (the estimated cost of which exceed \$50 million) and development applications seeking to vary a development standard under State Environmental Planning Policy No 1 (unless delegated to Council to determine). The threshold of \$50 million has remained unchanged since it was first determined in 1988.

A review of the CSPC was conducted during 2010 by an Independent Panel. The Review Panel report was released by the Minister for Planning on 25 August 2010 and confirmed that the Committee was an effective mechanism for managing City planning and development assessment. It recommended the continuation of the CSPC and made 21 recommendations to support and improve its continued operation.

On 9 September 2010 the CSPC resolved to endorse the findings and recommendations of the Review Panel and requested that the City Council develop and implement those recommendations that related to Council processes and procedures.

Central Sydney Traffic and Transport Committee

Part 4A was added to the City of Sydney Act in June 2012 to establish the Central Sydney Traffic and Transport Committee (CSTTC) consisting of representatives of the State Government and the City Council. The CSTTC is to provide for effective co-ordination of transport and traffic management in so much of the City of Sydney as comprises the Sydney Central Business District, the boundaries of which are shown on the Central Sydney Traffic and Transport Committee Operational Area Map.

The measures are designed to provide an effective coordination mechanism that can ensure decisions are made that support the broader interests of the State. Moreover, there would be strong interaction between the CSTTC and the existing Central Sydney Planning Committee when significant planning and development proposals impacted on traffic and transport in the CBD. The City Council remains the roads authority for its area under the *Roads Act 1993*.

Environmental planning powers

Part 6 of the Act contains special environmental planning powers for the City Council to order the rectification of landscaping where development is uncompleted; to enter into agreements with land owners where development is uncompleted; levy development contributions of one per cent on the non-residential portion of new development; and waiver of tendering requirements for conditional donations to public space improvement projects.

Observations

Several very detailed submissions were received in support of retention of the *City of Sydney Act 1988*. These submissions were largely predicated on the unique nature of the City of Sydney and its importance as a global city.

- *“A separate City of Sydney Act would be, in itself, a statement of recognition by the Parliament of NSW that:
 - the city of Sydney is NSW’s principal city and Australia’s global city,...
 - arising from this unique status, the City of Sydney faces complex issues and unique challenges which require a bespoke approach to its governance”*
- *A separate city of Sydney Act could and should provide a framework and positive force for a productive relationship based on mutual respect and cooperation between the Government of NSW and the Council of NSW’s principal city.” (Submission 17 – Lord Mayor of Sydney, Clr Clover Moore)*

“There is a strong, evidence-based case for retaining the City of Sydney Act as it provides an effective mechanism for dealing with both State and nationally significant issues of transport and development in the centre of the most important capital city in Australia.” (Submission 94 – City of Sydney Council)

The submissions also emphasised that, with the exception of Perth and Hobart, all other state capital cities had their own Acts.

While supporting the retention of the City of Sydney Act, submissions to the Taskforce also included suggestions on how the Act could be improved, particularly in relation to enrolment in and maintenance of the non-residential electoral roll.

"In relation to the maintenance of the electoral roll, a number of Chamber members have expressed frustration with the requirement for non-residential and ratepaying lessee electors having to re-enroll at each and every local government election..."

The enrolment process "...could very much be simplified if a standing pro-forma application process for non-residential electors were developed." (Submission 44 – NSW Business Chamber)

Non-Residential Roll of Electors

Concerns have been expressed about the difficulties that eligible voters experience in seeking enrolment on the non-residential roll of electors for the Council. The roll lapses following each ordinary election and the definitions of the various categories of non-residential electors have been suggested as unduly legalistic.

There is no data base containing the details of persons and entities that may qualify as non-residential electors. Nor does it appear feasible to prepare such a data base, and to keep it current, without incurring considerable ongoing expense. Reports suggest that prior to the 2012 council ordinary elections, initial delays in Council administrative processes hindered eligible electors being placed on the non-residential roll. It is understood that these issues were resolved satisfactorily.

The NSW Business Chamber has made suggestions regarding the following election related matters for the Sydney City Council –

- a need to provide a simplified means to assist businesses to enrol and vote
- provide that eligible electors remain on the non-residential roll for the following election unless successfully challenged
- where an elector on the non-residential roll fails to vote in consecutive elections their name is removed from the roll
- the enrolment process could be connected with rates payment.
- provide an active electronic enrolment form with explanatory notes on how to complete the form
- postal voting would be of assistance – as provided in Victoria
- improve the adequacy of candidate information prior to elections to improve its value for electors

Observations

The Taskforce considers that there is a need to retain a separate City of Sydney Act under the present local government boundary arrangements applying to metropolitan Sydney, based on:

- the significance of the City of Sydney as a global city
- a separate Act as one of the many drivers for placing the city in a pre-eminent position
- the City's unique position in holding important conferences, festivals and activities of local, regional, national and international significance
- the economic importance of the Central Business District of the City

If substantial boundary changes to the area of the City of Sydney were to occur, the Taskforce would suggest retention of these aspirations in either an expanded City of Sydney Act or the new Local Government Act.

The Taskforce will address these issues when the Independent Panel has completed its work of examining whether there should be an enhanced capacity for the City of Sydney.

The Taskforce notes that Sydney City Council seeks greater recognition in the Act of the symbolic position of the area as a global city. Submissions are invited as to how

this might be achieved. Should the City of Sydney Act include an 'objects' section and what would it provide?

There is strong support for retaining the Central Sydney Planning Committee to deal with significant development applications delivering a global focus. As this is a planning responsibility of the Council, consideration has been given to transferring the provisions of this Part of the City of Sydney Act to the Environmental Planning and Assessment Act. Given that an extensive review was recently conducted of the CSPC and no substantive issues have since been raised in this most recent examination, the Taskforce concludes that there should not be any legislative changes.

While Part 4A of the Act (Central Sydney Traffic and Transport Committee) could be transferred to transport legislation for simplicity of administration, this suggestion was not raised during consultation.

The Taskforce notes that there are synergies between the operations and responsibilities of the Central Sydney Planning Committee and the Central Sydney Traffic and Transport Committee. These Committees take an important strategic view of significant development applications affecting the City of Sydney and its transport operations. The Taskforce is of the view that these Committees should continue to sit together in legislation.

The Taskforce notes that while there may be merit in transferring the special environmental planning powers contained in Part 6 of the Act to the Environmental Planning and Assessment Act, there have been no submissions made in support of such a change.

Amendment of the electoral processes applying to the City of Sydney under Part 3 of the Act will be further considered by the Taskforce having regard to the findings and recommendations of the report of the Joint Standing Committee on Electoral Matters of the NSW Parliament which is inquiring into the conduct of the 2012 council ordinary elections. See also the Elections section of this paper for a discussion of election matters.

Taskforce Proposals

- 4.1** The Taskforce proposes that a separate Act for the City of Sydney be retained (pending the report and recommendations of the Independent Panel) noting that the Council is also subject to the provisions of the Local Government Act.

CHAPTER 5 – CONCLUSIONS & MAKING A SUBMISSION

5.1 Making a Submission

The intention of this Discussion Paper is to outline the deliberations of the Taskforce on options and proposals for the principles for the new legislation. The paper is designed to provoke thought and discussion on how the legislation and regulatory regime can best be designed to provide an optimum framework for long-term sustainable local government in NSW.

The Taskforce has developed a series of questions to invite comment on the proposals and options contained in this paper. These questions are:

1. Do you support the proposed approach to the construction of the new Act and why? If not why not?
2. What proposals do you support and why?
3. What proposals do you think could be improved, modified and strengthened and how?
4. What proposals do not have your support and why?
5. Do you have any alternative proposals for the new Local Government Act that you think the Taskforce should consider? What are they and what is the reason supporting your proposal(s)?
6. Do you have any other comments relevant to the review of the Local Government Act and the City of Sydney Act?

Submissions can be made through email or mail.

Email submissions to: LGATSubmissions@dlg.nsw.gov.au

Or mail to:

Local Government Acts Taskforce
C/- Division of Local Government
Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

It is expected that submissions proposing amendments to the legislation would contain sufficient background and supporting information on which to base a recommendation for change.

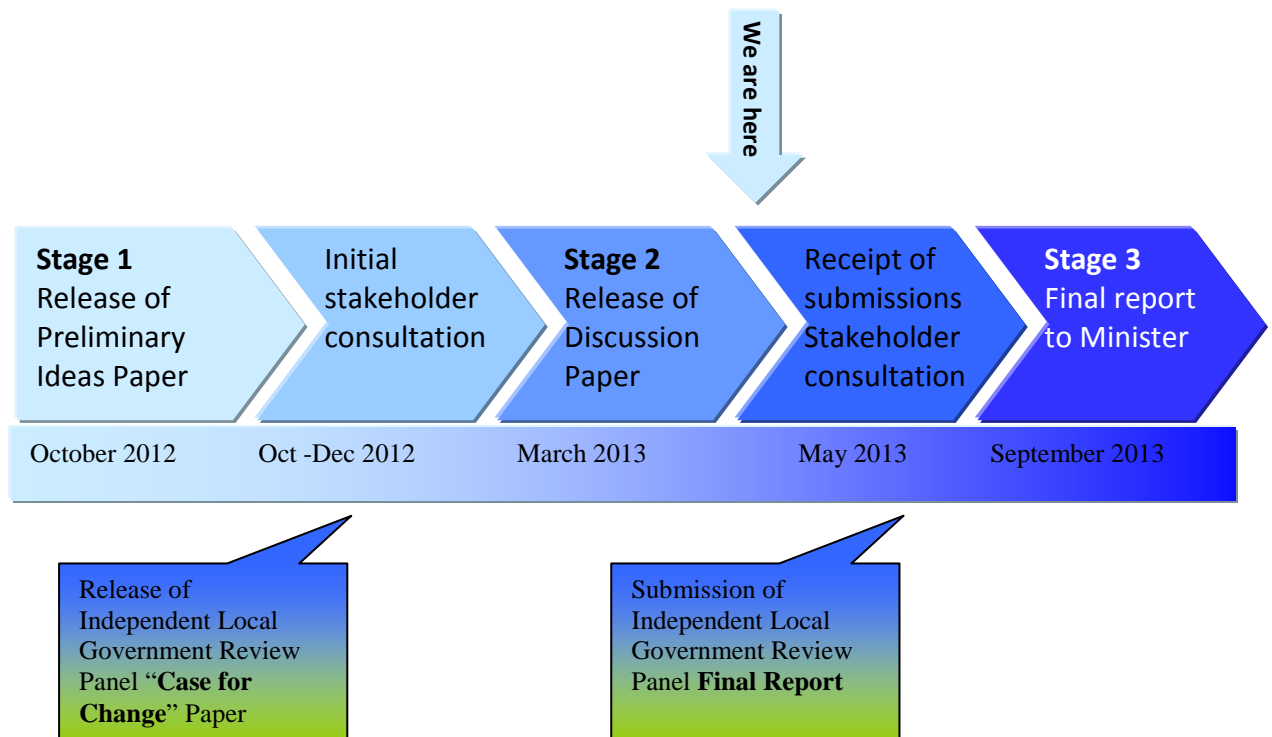
All submissions will be made publicly available. If you do not want any part of the submission or your personal details released, because of copyright or other cogent reasons, please indicate this clearly in your submission together with an explanation.

You should be aware that even if you request that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*).

CLOSING date for submissions is COB Friday, 28 June 2013.

5.2 Next Steps

The release of this discussion paper marks the commencement of the second stage of the work of the Taskforce which will include further consultation with local government, interested stakeholders and the broad community.



The Taskforce intends to hold a series of workshops at locations across NSW during May 2013. Details of the workshops will be available via the Taskforce [webpage](#):

http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_LGAT.asp?mi=10&ml=2&SecHd=HOME&AreaIndex=TASKFORCE

Following this next consultation and the close of submissions a final report will be prepared for the Minister for Local Government based on:

- Review and analysis of information obtained from research and consultation; and
- Adoption of those recommendations of the Independent Local Government Review Panel final report approved by the NSW Government and other relevant concurrent reviews referred to in this paper.

APPENDIX I – SUMMARY OF CONSULTATION FEEDBACK

1. Background

The Taskforce released its “Preliminary Ideas” paper in October 2012. The purpose of the paper was to generate discussions and ideas regarding the form and content of the new legislation. The paper posed five questions as follows:

- i) What top 5 principles should underpin the content of the new Local Government Act?
- ii) What is currently working well in the Local Government Act and why, and should it be retained in the new Act?
- iii) Are there areas in the Local Government Act that are working well but should be moved to another Act or into Regulations, Codes or Guidelines?
- iv) What is not working well in the Local Government Act (barriers and weaknesses) and should either be modified or not carried forward to the new Act?
- v) Should the City of Sydney Act be retained and if so, how can it be improved?

Written submissions were invited in response to these questions. Additionally, the Taskforce conducted workshops for councillors and relevant council staff (including county councils) to discuss the questions posed in the paper.

Summaries of the outcomes of the workshops and copies of the submissions received by the Taskforce have been posted on the Taskforce webpage: www.dlg.nsw.gov.au.

2. Purpose

The purpose of this paper is to provide a summary of the themes identified from the feedback received from this first stage of consultation. It should be noted that the information contained in these summaries are the suggestions and ideas generated by the participants at the workshops and do not necessarily represent the views of the Taskforce but will be considered by the Taskforce when formulating its position.

3. “Preliminary Ideas” Workshops for Councillors and Council Staff

The Taskforce held workshops in 14 locations across NSW during the period 24 October to 4 December 2012. The purpose of the workshops was to consult with councillors and council staff (including county councils) on the questions posed in the LGAT “Preliminary Ideas” paper.

To facilitate the free exchange of ideas, two workshops were held at each location - one for elected councillors and one for council staff. A total of 380 people attended the sessions. Councillors and council staff attended from 111 local government areas, 5 county councils, 4 regional organisations of councils and the Local Government and Shires Associations of NSW.

More details of the workshops and feedback can be found on the Taskforce webpage: www.dlg.nsw.gov.au.

4. Written Submissions in Response to the “Preliminary Ideas” Paper

The Taskforce received 111 written submissions responding to the questions posed in the “Preliminary Ideas” paper. All submissions have been posted on the Taskforce internet page. Submissions were received from:

- Councils, council staff and councillors from 64 local government areas
- 5 regional organisations of councils
- 1 county council
- 12 professional groups
- 6 business organisations
- 7 community groups and churches
- 10 private individuals
- 5 government groups

- 1 submission uncategorised

5. Summary of Ideas and Suggestions Received via Workshops and Written Submissions

With some exceptions, the themes and ideas that emerged at the workshops were broadly consistent with those contained in the written submissions. The exceptions relate to written submissions received from those stakeholders who were not included in the initial workshops, such as charitable institutions and business organisations.

The following discussion provides an overview of the key themes and issues that emerged from both the workshops and the submissions responding to the five (5) questions posed in the “Preliminary Ideas” paper.

As stated above, it should be noted that the information contained below summarises the main themes generated by the participants at the workshops and in written submissions. As such this paper is not exhaustive and does not cover all the detailed matters contained in the written submissions, which can be accessed on the Taskforce webpage.

They also do not necessarily represent the views of the Taskforce. The Taskforce will take them into consideration when formulating its position on the form and framework of the new Acts.

i) What top 5 principles should underpin the content of the new Local Government Act?

Principles can be divided into two main categories: those reflecting the principles relating to the construction of the new Act; and those relating to the principles that should form the framework for Local Government in NSW and as such will be dealt with separately.

1) *Principles underpinning the framework for Local Government in NSW:*

Throughout the workshops and the written submissions there was a general consensus about the principles for the framework for local government. The list in **Table A** is a summary of the most commonly articulated principles.

Table A

- Autonomy, self determination – local councils should have a power of general competence
- Interconnectedness – with the local community and with the region and the State
- Good governance – separation of powers of councillors and council staff, clarity of roles and responsibilities – council staff, councillors, mayor and the State
- Leadership - stewardship
- Social justice, equity
- Transparent, accountable, efficient, effective, ethical, responsible decision making - promote integrity
- Sustainability
- Fiscal responsibility
- Consultation – acting in the public interest; facilitate and encourage local participation
- Strategic long term focus
- Service to the community now and into the future
- Local democracy
- Strengthen regional and State ties - partnerships
- Flexible
- Custodian and trustee of public assets to be managed effectively and accountability
- Promote economic, social and environmental wellbeing of LGA
- Business-like
- Foster innovation
- Recognise and manage risk
- Core functions and community enhancing functions

Table B contains extracts from 12 of the written submissions and demonstrates this consensus.

Table B – Sample of written submissions responding to question 1. What top 5 principles should underpin the content of the new Local Government Act?

<p>Submission 98 – Local Government and Shires Associations of NSW</p> <ol style="list-style-type: none"> Seek to give clear expression of the purpose, status, models and functions of 21st century Local Government Seek to maximise council autonomy Equip councils to be the leaders, identity and place makers, and service providers their communities want them to be Avoid unnecessary prescription and/or regulation of councils and the communities they serve 	<p>Submission 29 - Shoalhaven City Council</p> <ol style="list-style-type: none"> Good Governance – ethics, transparency, accountability Sustainability – financial, economic, quality of life, environment Community engagement – involve residences and ratepayers and other relevant stakeholders Social justice – access and equity in services and policy Customer/stakeholder focus 	<p>Submission 24- Warringah Council</p> <ol style="list-style-type: none"> Sustainability both present and future focused. Acting in the public interest considerations Democratic representation Good governance of and by local government Establishing and maintaining partnerships with other bodies 	<p>Submission 99 – Gosford City Council</p> <ol style="list-style-type: none"> Be transparent, accountable, responsive, proactive and always act in the public interest Practice good governance Protect the environment though sustainable and environmentally sound decision making Strive to improve the quality of life for the residents of their Local Government Area Use resources effectively and efficiently to provide the best possible services to the community
<p>Submission 100 - Penrith City Council</p> <ol style="list-style-type: none"> Autonomy and accountability Clear leadership and responsibility Efficient and effective management and governance Intelligible, innovative and progressive system of government Responsiveness to the evolving needs of the community 	<p>Submission 70 – The Hills Shire Council</p> <ol style="list-style-type: none"> Solid foundations for Councillors, General Managers, framework of Local Government and oversight of services Promote ethical, transparent and accountable Local Government Enabling and outcome based legislation Contemporary and progressive legislation 	<p>Submission 53 – Queanbeyan City Council</p> <ol style="list-style-type: none"> Good governance and effective & efficient management Clear leadership, accountability and transparency Being abreast of technology and its effective use Articulating direction of the community Responsiveness to changing public needs 	<p>Submission 71 – Cowra Council</p> <ol style="list-style-type: none"> Provide flexibility to Councils Reduce and streamline compliance whilst retaining accountability Clarify responsibilities to provide certainty Autonomy to provide increased service levels Adopt an underlying philosophy of State and Local Government being equal partners such that the legislation is not written in a prescriptive master/servant manner
<p>Submission 35 – Manly Council</p> <p>Local government is and shall continue to be:</p> <ol style="list-style-type: none"> locally orientated, democratic and consensus orientated an elected (...) sphere of representative government, with effective representation at local level Local government shall be equitable, transparent, accountable and responsive to its electors, the local community and the wider public, as well as participatory and inclusive and efficient and effective Each local council should have administrative as well as legislative functions The powers, authorities, duties and functions of council shall not be altered or changed except after due consultation with local government 	<p>Submission 5 – Tenterfield Shire Council</p> <p>Enshrine sense of community belonging together</p> <ol style="list-style-type: none"> Self-determination and autonomy Diversity of structures, of decision-making processes, of services and staffing. Participatory democracy Interconnectedness within the Council and Shire Lead councils and shires firmly into the E-Technological era Principles of good governance – transparency and accountability 	<p>Submission 40 – Kiama Council</p> <ol style="list-style-type: none"> Transparency of process and decision making and input Facilitates and encourages local participation and input Empowers councils to serve their communities as community identified in their Community Strategic Plan Recognises Local Government as a key stakeholder in Regional and State matters and provides for a strong and positive relationship between State and local Government Provides statutory framework to support local government functions 	<p>Submission 30 – Lake Macquarie City Council</p> <ol style="list-style-type: none"> Open Government – Integrated Planning and Reporting Framework should be the ultimate basis for the Act. Accountability and transparency – the role of IPART should be reviewed and potentially strengthened Flexibility – The Act should have more flexible provisions that provide scope to recognise the needs of each particular community Enabling and clearly define responsibilities and powers

It was evident from both the written submissions and feedback from the workshops that there is clear support that as a principle, local government in NSW should be self-governing and retain a power of general competence.

The importance of the principle of local democracy and keeping the “local” in local government was also evident.

The principle of autonomy was balanced by the principle that local government should exercise its powers within a strong governance framework promoting: accountability both to the community and the State; and the exercise of long term social and fiscal responsibility.

Linked with accountability was the importance of relationships between local councils and their local community, and then more broadly regionally and with the State.

This was underpinned by the principle that local government, in the provision of services to the community and as custodian and trustee of public assets, must exercise its functions in meaningful consultation with its community to ensure that it is acting in the public interest.

The idea that local government should provide long term sustainable strategic leadership for the community was also strongly evident both from the workshops and in written submissions.

2) **Principles relating to the construction of the new Act:**

In the second category of principles relating to the construction of the new Local Government Act the following list sets out the most commonly suggested principles:

- Less prescriptive
- Streamlined, simpler
- Logical
- Reduce unnecessary red tape
- The “why” not the “how”
- Plain language
- Consistent and integrated with other legislation, regulations and codes
- Recognise technology
- Should be outcome focussed, not process driven
- Clear delineation between Act, Regulations, Guidelines and Codes.

Table C extracts from 6 written submissions on principles for local government.

<p>Submission 83 – Waverley Council Submission 35 – Manly Council</p> <ul style="list-style-type: none"> • Modern • Flexible • Streamlined • Supporting diversity among councils • Written in plain language, and • Eliminates unnecessary red tape affecting councils and the public 	<p>Submission 69 – Council of the Shire of Bourke</p> <ul style="list-style-type: none"> • Recognition that “one size” doesn’t fit all and the diversity of councils activities and the problems they deal with on a daily basis within the different communities • Concise with any additional information need to supplement the Act being provided via regulation or Practice Note • Readily understood and devoid of ambiguity and the need for legal interpretation • Be enabling and not restrictive
<p>Submission 49 – Wollongong City Council Submission 58 – Wollondilly Shire Council</p> <ul style="list-style-type: none"> • Meets the current and future needs of local government • Is streamlined and designed so as to strengthen local government so that it can deliver to its community in an efficient and effective manner • Is modern and written in plain language and, while providing a comprehensive framework, unnecessary red tape is avoided • Recognises the diversity of local government in NSW • Provides greater clarity on the role and responsibility of local government 	<p>Submission 42 – Parramatta City Council</p> <ul style="list-style-type: none"> • Enabling act that establishes Councils as a body, setting out clearly their charter, functions and powers and how they should be constituted • Avoid duplicating powers or regulations already set out in other legislation • Facilitate collaboration between State, Regional and Local authorities and non-government bodies to achieve desirable community outcomes • Local Government should engage with and be accountable to its community for its activities and expenditure • Principles-based Act supported by regulations, codes and local council policies

ii) What is currently working well in the Local Government Act and why, and should it be retained in the new Act?

Feedback can be grouped into two main categories:

- c) ideas and suggestions for which there was a general consensus and few, if any, opposing suggestions, and
- d) ideas and suggestions which appeared both in response to this question and to question 4 (What is not working well). On closer consideration of these matters, it was evident that these areas were often where the general principle covered by the legislation was supported but it was felt that the section of the legislation could be improved by being modernised, simplified or clarified.

An example of such matters is the management system for public land. The regulation of public land appeared in the responses to both question ii) and question iv). Examination of the submissions revealed that the criticism of the regulation of public land was directed towards the way in which it is regulated and the complexity of the legislation, rather than toward the principle that public land should be safeguarded as a community asset. This principle was the rationale underpinning those submissions that cited public land as an area of the Act that is generally working well.

The following is a summary of those ideas and suggestions for which there was general consensus that they were working well.

Those ideas and suggestions which were submitted in response to both this question and question 4 have been included in the summary of feedback and submissions in response to question 4 – what is not working well – barriers or weaknesses.

a) *ideas and suggestions where there was a general consensus that they are working well and few, if any, opposing suggestions*

Table D lists the key areas that were submitted as areas of the current Local Government Act that are working well and should be retained in the new Act.

Table D – Areas of the Act identified as working well

- Charter – needs to be modernised and reflect integrated planning and reporting
- Section 24 – devolution of general power of competency
- Community Strategic Plan/Integrated Planning and Reporting (but with refinement) – Role of councillors/mayor and general manager – but needs clarification
- Many sections work well, but focused on processes rather than outcomes
- Section 10 – provision relating to closing of meetings
- Meeting procedures, but needs to be consolidated
- Elections and democratic principles generally, however, election processes could be improved – see response to question 4 below
- Section 733 – exemption from liability – needs to be extended to cover coastal councils to limit potential exposure arising from climate change
- Delegations of authority, but needs refinement to reflect roles and responsibilities and facilitate the efficient and effective operation of councils
- The Act structure generally works well, but needs refinement to reflect integrated planning and reporting
- Dictionary
- Disclosure of interests with some clarification and refinement

The Taskforce also received feedback, both through the workshops and written submissions, that generally the Act worked well but would benefit from a general review to make it more streamlined and coherent:

"There are many sections of the Act that work well, however, in general the Act is too focused on processes rather than outcomes." (Submission 84 – Harden Shire Council)

"The Associations believe the intent and the overall structure of the Local Government Act 1993 remain valid. We see no compelling reason to scrap the Act and start afresh with a blank canvass.

However, the Associations believe that the legislation needs a major edit to assist it remain contemporary." (Submission 98 – Local Government and Shires Associations)

"Generally, the City feels that the current legislative framework for local government in New South Wales works well and should be retained, with some refinement and increased flexibility." (Submission 94 – City of Sydney)

While it is evident that from the submissions and workshops that there are several areas of the Act that are thought to be generally working well and, more than that, should be elevated to a more prominent role in the new Act. Perhaps the three key areas are:

- The Charter
- Integrated Planning and Reporting; and
- Roles and Responsibilities.

Charter

There was almost universal support that the Charter is an important part of the Act and should be retained. While there were a number of suggestions that the Charter would benefit from redrafting to be more principles-based and better reflect the current and future role of modern local government, it was apparent that it was already seen as providing valuable guiding principles for local government.

"The Charter in the current Act is well drafted and sets out useful guiding principles. The Charter is succinct but requires greater emphasis throughout the Act. Currently the Charter stands on its own and the provisions need to be referenced throughout the legislation" (Submission 15 – Camden Council).

The Charter provides "an effective statement of purpose for Councils" (Submission 27 – Planning Institute of Australia, (NSW Division))

"Chapters 3 and 4 of the Act which set out the Charter and how the community can influence what a council does are working well." (Submission 83 – Waverley Council).

"...The contents of the Charter were sometimes derided as pious aspirations at their best, these appear to have served communities well....However, there is room for refreshing and refining section 8" (Submission 98 – Local Government and Shires Associations)

Integrated Planning and Reporting

The value of integrated planning and reporting and the suggestion that it should be given a more central place in the new Act was strongly echoed throughout the submissions and workshops. With few exceptions both the workshops and the written submissions nominated Integrated Planning and Reporting as working well.

"Integrated Planning & Reporting is the most important ideological change introduced to the sector since the formation of councils themselves. These provisions need to be brought forward within the Act to complement the provisions dealing with the councils' Charter." (Submission 83 Waverley Council).

"These provisions are proving to be strategic and working well to improve the planning by councils and their accountability. The effective implementation of these provisions helps justify the new Act being less prescriptive than its current form." (Submission 24 – Warringah Council).

"The current Act places great importance on strategic planning within local government. This is an excellent feature of the Act and should be retained. The Integrated Planning and Reporting Framework is a cornerstone to this process." (Submission 43 – Griffith City Council)

"Provide for Integrated Planning Framework concepts and plans that encompass State Government as well as local government and its communities." (Submission 81 – City of Blue Mountains)

Suggestions were made for how the new Act could be structured around integrated planning and reporting and how consequently the Act could be more streamlined to reduce current inconsistencies and duplication in reporting and consultation requirements.

“While these provisions have worked well, a clear failure in their drafting is a lack of a clear linkage to councils’ land use planning process” (Submission 44 – NSW Business Chamber)

Feedback was also received that consideration should be given to simplifying the requirements of integrated planning and reporting, particularly in respect of smaller councils. Similarly, suggestions were made that council reporting and community consultation requirements generally could be streamlined and made more coherent by using the vehicle of integrated planning and reporting as the framework for the new Act.

“Concept of integrated planning should remain and continue to develop but in a more streamlined way and one that integrates local government and State Government.” (Submission 81 – Blue Mountains City Council) A similar sentiment was expressed by the Planning Institute of Australia, NSW Division (**Submission 27**) who wrote *“IPR can be better integrated with the new Planning System and in particular the community consultation and review processes outlined in the Government’s Green Paper on the Planning Review.”*

Roles and Responsibilities

It was apparent from both the workshops and the written submissions that the importance of having clearly articulated roles and responsibilities for councillors, the mayor and the general manager cannot be understated.

The importance of clearly defining the role and responsibilities of elected representatives and the general manager is also reflected in other areas where feedback and submissions suggested the Act is not working well, such as the provisions relating to the appointment of senior staff and the review of the organisation structure.

“The current Act provides a clear distinction between the roles of elected members and the General Manager and needs to be strengthened.” (Submission 53 - Queanbeyan City Council)

“The Act should clearly define the line between the strategic/policy responsibilities of councillors and the operational responsibilities of the GM and staff.” (Submission 61 – Clarence Valley Council).

“Under new legislation the roles should be more clearly defined so that there is no doubt as to where roles and responsibilities start and end.” (Submission 88 – Sutherland Shire Council).

Both at the workshops and in the written submissions there were various suggestions regarding refining the definition for the mayor and councillors so that it is reflective of the integrated planning and reporting framework.

There was also an evident theme that the relationship between local government and the State should be a principle underpinning the new Act and be clearly articulated in the legislation.

iii) Are there areas in the Local Government Act that are working well but should be moved to another Act or into Regulations, Codes or Guidelines?

In considering this question, a frequently expressed view was that the new Local Government Act should be less prescriptive and more principles based. It was felt that the Act should contain the “what”, with the “how” being contained in regulation, codes or guidelines. As one councillor expressed it *“I need to be able to tell the time not how to make the watch”*.

This view is tempered with the opinion that it is important that local government has a degree of certainty and a concern that if the new Act is too flexible it could become ambiguous, subject to broad interpretation and thus result in councils becoming subject to increased litigation.

The view was also expressed that by moving provisions that are working well into regulations, codes and/or guidelines it “..will become very difficult and tedious to work with a plethora of documents and it will only result in more confusion”. (**Submission 100 – Penrith City Council**)

Nevertheless there was general agreement that, wherever possible, prescription in the Act should be minimised.

The following is a list of the areas that were recommended to be moved into another Act or into regulations, codes or guidelines.

- Elections
- Approvals
- Plans of management
- Pecuniary interest
- Section 68 approvals – manufactured homes; on site waste water; wood heaters
- Section 64 - water
- Public Land provisions
- Tendering
- Chapter 7 approvals could be transferred to Planning Act
- Notices and orders transferred to Environmental Planning and Assessment Act and penalties rationalised under one Act
- Equal Employment Opportunity could be removed if section 122B of the *Anti-Discrimination Act 1977* is amended to include Local Government Authorities

iv) What is not working well in the Local Government Act (barriers and weaknesses) and should either be modified or not carried forward to the new Act?

This question elicited the largest response. Submissions varied from single issue submissions through to detailed responses addressing each section of the current Act. It is not proposed in this summary of submissions to deal with detailed recommendations for amendment of specific sections. The suggestions and submissions will be taken into account in the formulation of the new Act where relevant.

As mentioned above, there were a number of areas that appeared on both sides of the ledger – that is in response to question ii) “What is working well” and this question “What is not working well”. Generally these are matters which it was considered should be retained and were supported in principle but it is submitted needed improvement, modernisation, clarification or simplification.

Responses also included a general observation that there are overlaps and at times inconsistency between the Local Government Act and other pieces of legislation governing the operation and functions of local government, and that it would be beneficial if these could be resolved.

The following is a summary, grouped under general topic areas, of those ideas and suggestions which appeared in response to this question:

Public Land (ss 25 – 54)

While it was generally agreed that it is important to ensure that public lands are adequately protected, feedback received through the workshops and via the submissions overwhelmingly suggested that the current provisions relating to public land classification and management are unnecessarily prescriptive, costly, onerous, in need of review and are inconsistent with the requirements relating to the management of Crown land by councils; and restrict councils' ability to deal with or raise revenue from land which can impact on councils' viability.

Suggestions to address these issues included: transfer of community land management to a single new Act covering all public lands; better integrate public land management under the integrated planning and reporting framework; remove excess prescription from the Act; and focus on the principles for the management and safeguard of community land.

"Classification of land – Community and Operational land – this should stay – however the legislation should be more flexible." (Submission 56 – Shellharbour City Council)

"The Local Government Act and the Crown Lands Act are not necessarily compatible and Councils are forced to manage and treat public land in two different ways yet the usage and public purposes are primarily the same. This creates significant inefficiencies and inconsistencies and is confusing to our community" (Submission 24 – Warringah Council)

Acquisition of Land (Chapter 8 Part 1 ss 186 – 190)

In relation to the provisions regulating the compulsory acquisition of land for public purposes, two main issues were raised. The first related to the process. Submissions were received suggesting that the process could be streamlined and questioning the need to obtain ministerial approval.

The second related to restriction on compulsory acquisition of land for re-sale, with suggestions that re-sale should be permitted for a broader category of circumstances *"... for 'employment lands' development or other broad economic/purpose should be permissible. This enables the process to deal with Native Title issues and is an effective means to free-up otherwise unutilised public lands."* (Submission 29 – Shoalhaven City Council)

Tendering (s. 55)

The overwhelming view articulated both at the workshops and via submissions was that while it is important that local councils are accountable, open and transparent in the way in which they conduct their business, and that the risks of fraud and corruption should be minimised, the provisions in the Act relating to tendering are in need of review and amendment. In particular, the workshops and submissions commented on the following matters:

- the current tendering threshold of \$150,000 is too low
- the advertising requirements were identified as onerous, costly and not reflective of current technology
- the current delegations constrain the ability of councils to engage in regionally based procurement
- tendering should be an operational matter and reported to Council on an exception basis
- the possible benefits of aligning local government procurement with the State Government procurement framework

Approvals (Chapter 7 Part 1 s68)

A number of submissions indicated that section 68 approvals could be improved. The main concerns were the regime is too prescriptive, unnecessarily complicated (particularly in relation to public land) and inconsistent with consents pursuant to the *Environmental Planning and Assessment Act 1997*. Suggestions were made that consideration be given to transferring those approvals relevant to public roads to the *Roads Act 1993* and the majority of the matters listed under Part F of the Table of Approvals to section 68 be transferred to the *Environmental Planning and Assessment Act*.

"The section 68 approval process ...in general is onerous for applicants. All 'development related approvals' (ie installation of manufactured homes, stormwater etc) should be regulated via a single act." (Submission 99 – Gosford City Council)

Orders (Chapter 7 Part 2 and 3)

The provisions in the Act relating to the making of Orders is an example of an issue contained in responses to both: question 2 "What is working well" - *"The structure of the notice of intent and then order process is logical, facilitates procedural fairness and provides a robust legal framework for Councils to work within"*. (Submission 19 – Port Stephens Council); and the question "What is not working well" - *"the current process provisions are considered to be overly complex and unnecessarily difficult for council officers"*. (Submission 94 – City of Sydney Council)

Other submissions were received that, while not critical of the Orders process, contained suggestions to amend the Table at section 124, by both the addition of matters and/or the transfer of matters to other legislation such as the *Food Act 2003* and the *Protection of the Environment Operations Act 1997*.

As an alternative to Orders, submissions were also made that local councils should have the power to pass local laws *"that can be used to reflect local community standards"* (Submission 31 – Albury City Council) similar to other jurisdictions such as Victoria. *"The ability to create Local laws/Bylaws would provide greater flexibility for Councils to create controls and processes suited to their needs."* (Submission 53 – Queanbeyan City Council)

Councillor Remuneration - Local Government Remuneration Tribunal (Chapter 9 Part 2 Division 4)

At both the workshops and in the written submissions there was considerable discussion of councillor remuneration and the most appropriate mechanism for determining councillor fees. These discussions were generally framed in the context of attracting appropriately skilled people to stand for election, combined with the view that the current fees do not reflect the amount of work required of elected officials.

"The current fees payable for Mayors and Councillors in NSW are far too low firstly to attract suitable candidates and then remunerate elected candidates appropriately for the workload that they undertake." (Submission 34 – Port Macquarie-Hastings Council)

The issue of councillor remuneration was also associated with various proposals surrounding councillor training. This was a topic of some discussion at the workshops, soliciting diverse opinions from mandatory councillor training, through to linking the level of councillor fees to attainment of formal qualifications. *"Councillor remuneration levels should provide incentives for Councillors who attain formal accreditation."* (Submission 73 – Wagga Wagga City Council)

Expenses and Facilities (Chapter 9 Part 2 Division 5)

Associated with councillor remuneration are the payment of expenses and the provision of facilities to councillors. The main concern raised in workshops and written submissions was the cost and burden associated with the requirement to advertise the policy being adopted by council every time it was amended, even if the proposed amendments are not substantial or even the same.

Elections (Chapter 10)

While it was evident that there is general support for local democracy and the election of local representatives, it was also apparent from the feedback and submissions that there are a number of matters related to elections that are considered not to be “working well”. The following is a summary of matters most commonly raised as requiring review and amendment:

- There was considerable debate about the most appropriate election system – exhaustive preferential; optional preferential; proportional; or first past the post. At both the workshops and in a number of submissions the view was expressed that group voting should *“not be a system of voting in Local Government Elections”* (**Submission 31 – Albury City Council**)
- There was significant support for the option of postal voting, particularly for by-elections and, if possible, electronic voting *“...consideration should also be given to the opportunity to better utilise postal voting as a means to increase the participation of the community in local government elections”*. (**Submission 44 – NSW Business Chamber**)
- There were a variety of suggestions, both at workshops and in submissions, around the issue of by-elections and the associated cost, particularly where a by-election has to be called either in the first year following an ordinary council election or the 12 months prior to an ordinary council election. Suggestions ranged from allowing councils to continue to operate with one vacant position, through to having a system where the next candidate that would have been elected at the previous ordinary election be appointed to fill the vacancy
- Both at the workshops and in submissions suggestions were made for half term elections for councillors, similar to senate elections. The rationale behind such suggestions was that it would allow for continuity and retention of corporate knowledge, which would support long term strategic planning
- The matter of wards was also raised at workshops and in a number of submissions with the suggestion that, for a variety of reasons, the ward system should be abolished
- A number of submissions raised the issue of the non-residential electoral roll and the fact that this roll lapses following each election requiring these persons to re-enrol each election.

Council Staffing (Chapter 11)

A commonly expressed view is that the current Act is too prescriptive and needs to be updated and modernised. Submissions were made in regard to proposed amendments for specific sections of the Act. The following are some of the matters raised in workshops and submissions in respect of council staffing:

"The provisions in this Chapter are too prescriptive and don't provide the flexibility required to manage a modern organisation" (Submission 24 – Warringah Council);

"..the provisions for the appointment of staff is not contemporary and needs to be reviewed." (Submission 102 - Lismore City Council).

"In its current form the Act seems to be prescriptive rather than 'principle based'.
(Submission 70 – The Hills Shire Council).

- The requirement for council to review the organisation structure within 12 months of taking office is ambiguous, does not fit well with integrated planning and reporting requirements and causes uncertainty regarding the roles and responsibilities of the general manager and the council in regard to staffing generally
- Advertising provisions are too prescriptive, inflexible and outdated (s 348); merit selection requirements are unnecessarily restrictive; and the time limit for temporary appointments of 12 months is too restrictive (s 351)
- Security of tenure for general managers under the standard form of contract; the role of the elected council in the appointment of senior staff; and the setting of remuneration for general managers
- Provisions relating to staff protections in the event of council amalgamations - a number of submissions proposed that the current time limit for maintaining staff post an amalgamation should be reduced from 3 years to 1 year. There were, however, differing views on this matter and that local employment, particularly in rural areas *"This section is important because often local government is the largest employer in rural centres. If the number of local government jobs in the area is reduced, it has a significant impact on the community."* **(Submission 50 – United Services Union)**

Public Private Partnerships (Chapter 12 Part 6) and formation of corporations (Chapter 12 Part 1 s 358)

Both at the workshops and through the submissions it was apparent that the provisions relating to public private partnerships (PPP) are considered by many to be too onerous and an unnecessary constraint on councils' ability to enter into commercial operations. The provisions are viewed as causing costly delays to projects and stifling innovation and flexibility. *"Current provisions for setting up Public Private partnerships (PPP) are too complex and onerous."* **(Submission 24 – Warringah Council)**

The benefit of the PPP process was also questioned. *"There needs to be greater transparency in how public-private partnerships and arms-length entities are assessed and approved."* **(Submission 30 - Lake Macquarie City Council)**

Related to this is the issue of the requirement to obtain Ministerial consent to form corporations and other entities. A number of submissions raised this as a constraint on the ability of councils to enter into resource sharing arrangements. Section 358 of the Act *"...has the capacity to inhibit investment and/or participation in initiatives such as research partnerships such as a Corporative Research Centre (often established as a corporation), infrastructure investment such as recycled water schemes and participation in ROCs."* **(Submission 67 – Sydney Coastal Councils Group Inc)**

Conduct (Chapter 14)

The Taskforce received a number of submissions regarding the code of conduct. Most of these were in relation to inappropriate use of the Code of Conduct.

The Taskforce is aware that amendments have recently been made to the provisions of the Model Code of Conduct, commencing on 1 March 2013, with the purpose of: providing flexibility to resolve non-serious complaints, minimising costs to councils; improving investigation of complaints and complaints management; and providing stronger penalties for ongoing disruptive behaviour and serious misconduct. The Taskforce anticipates that these amendments will address most of this issues raised at workshops and in submissions.

Revenue

Many of the written submissions and feedback from the workshops called for removal of rate-pegging. The matter of rate-pegging is being examined by the Independent Local Government Review Panel. The Taskforce is required to adopt those recommendations of the Panel that are approved by the Government.

A number of very detailed submissions raised issues with the provisions in the Act relating to council financing and, in particular, anomalies associated with the rating provisions.

"Rating provisions are too complex and ill defined in certain respects. Some flexibility is required, but it should be mandatory that all Councils must have a policy document on all discretionary sections of the Act. Less discretionary options will result in fairer State-wide applied taxation and lessen the chance of error or poor decision making at a local level."
(Submission 81 – Blue Mountains City Council)

The following are some of the matters raised in workshops and submissions in respect of council staffing:

- Anomalies arising from the rating categories
- Submissions were received from charitable institutions supporting the retention of sections 555 to 558 of the Act, which provide for relief from rates for their organisations. A contrary view was also expressed that these provisions are too broad and being *"at times vague and difficult to understand ... which leaves the Councils open to legal challenges"*. (Submission 91 – NSW Revenue Professionals Society Inc) It would seem that these concerns are particularly relevant to the growth in public benevolent institutions and private schools, some of which make considerable use of council resources. Concern was raised that as a consequence of this growth the community is increasingly required to pay additional rates in order that councils' revenue base does not increase.
- The issue of the level of the pensioner rebate and the percentage contribution of councils to the rebate. Concern was expressed that the maximum level of rebate has remained unchanged since 1993 and that some councils suffer financial disadvantage as a result of the forgone revenue arising from the rebate.
- Concern was also raised that the current rating system *"is too easily abused and encouraged discrimination against commercial properties"*. (Submission 28 – Shopping Centre Council of Australia)

Fees (Chapter 15 Part 10)

The current provisions governing setting of fees and charges was seen as a particular issue in relation to council commercial business activities. It was submitted that the public notice period required for setting (or amending) fees and charges is inflexible and prohibitive for a competitive market and places councils at a disadvantage to privately operated commercial operations.

"The public notice period currently required for setting (or amending) fees and charges is quite prohibitive when a business activity is reacting to market demands or competitive activity, particularly when competition does not operate within such constraints." (Submission 34 – Port Macquarie-Hastings Council)

"Council are unable to implement fees or charges for a new demand/service if not currently in the published schedule of fees and charges. There is a genuine need for greater flexibility to meet a new demand or when an opportunity arises." (Submission 70 – The Hills Shire Council)

Loans (Chapter 15 part 12)

Both at the workshops and in submissions the view was expressed that the requirement to seek ministerial approval for internal loans for monies raised via special rates or charges (section 410) is unnecessarily onerous. The view was expressed that the *"The existing requirement in the Code of Accounting Practice for Councils to account for internal loans and report in the Audited Financial Statements is adequate in terms of the 'stewardship' of internal loans."* (Submission 73 – Wagga Wagga City Council)

Audit and Risk Management - The issues of internal and external audit were raised both through the workshops and in written submission. Issues raised included: should the internal audit function be mandated via the legislation; should the Auditor General have a role in the audit framework for local government; and Should the new Act be framed to include the principles of risk management. It should be noted that the Independent Local Government Review Panel is considering these matters.

It was also suggested that the standards in accordance with which council financial reports must be audited be changed from the Australian Accounting Research Foundation to the Australian Accounting Standards Board, and that responsibility

"Warringah supports the NSW Auditor General playing a significant role in reviewing the long term financial plan of councils and the quality of the information and assumptions underlying the forecast. This oversight should also be extended to reviewing the financial statements and would improve the rigour and transparency of the process." (Submission 24 – Warringah Council)

for reporting on the matters set out in Clause 227 of the Local Government (General) Regulation should be transferred from the auditor to the governing councillors to align with normal practice for Company Directors. *"This proposed change in responsibility would assist councils in taking ownership of the financial performance of their councils."* (Submission 80 – Local Government Auditors' Association of NSW Inc)

Enforcement (Chapter 17) - Suggestions were received that the provisions relating to penalty notices should be made more flexible and extended to apply to a variety of other situations. It was proposed that expansion of the application of penalty notices on a graduated scale would offer greater deterrent than the current time-consuming expensive court process required to enforce other notices and orders.

Alcohol Free Zones and Alcohol Prohibited Zones - The provisions relating to the establishment and maintenance of Alcohol Free Zones and Alcohol Prohibited Zones were criticised for being too onerous, inconsistent and complex. It was submitted that the provisions be integrated into a single set of criteria for determination and implementation of alcohol restriction in a public place.

Water Management

The Taskforce received several submissions specifically on the topic of local government acting as water authorities.

Additionally the State Government is currently undertaking a joint review of the *Water Industry Competition Act 2006* and the regulatory arrangements for water recycling under the Local Government Act and the Independent Local Government Review Panel is also considering appropriate structures.

The main thrust of these submissions is the need to rationalise the regulatory framework within which water utilities must operate to remove inconsistencies and overlap from the system and to ensure clear regulatory roles and responsibilities.

"A number of other agencies, including the Division of Local Government, NSW Health, the Office of Environment and Heritage and the Dam Safety Committee, are each responsible for aspects of the regulation of the NSW local water utilities (Submission 104 – Department of Primary Industries – Office of Water)"

"We are not attached to a particular regulatory model for LWUs. However, the regulatory model must be robust enough to allow flexibility in structural arrangements of the utilities to best support the services it provides to the community and remove regulatory duplication"
(Submission 66 – Water Directorate Inc)

"We encourage the taskforce to consider the separation of water services from general purpose councils, by either strengthening the county council model, or considering the possible development of a Local Water Utilities Act."
(Submission 33 – MidCoast Water)

"Ideally, local water utility regulation would be grouped together in the Act and its regulation covering service provision, customer relations, governance and economic regulation and establishing a single regulator for these issues." (Submission 98 – Local Government & Shires Associations of NSW)

The submissions proposed various ways in which this could be achieved, including the development of a specific Local Water Utilities Act.

Technology and Communication

A common theme through the workshops and submissions is that the current Act does not reflect modern technology. Further still the inability of councils to be able to utilise modern technology in some instances resulted in decreased efficiency and effectiveness and avoidable costs to councils. Some of the areas where it was suggested that the utilisation of e-technology would be valuable included: recruitment; tendering; community engagement; data management; and even attendance at meetings. The quotes below illustrate some of the suggested uses that could be made of e-technology to assist councils increase efficiency and improved communication with their community.

"To deliver the facilities and services the community needs, it's absolutely vital that a council communicates effectively with its community. Unfortunately however, the provisions in the current Act (see Chapter 17, Division 3, sec 705-707 in relation to notices fail to reflect modern communication opportunities and the ways in which people generally seek information from Government." (Submission 44 – NSW Business Chamber)

"Current legislation states that data should be held within the State. With the emergence of 'Cloud Services', this increasingly becoming a barrier to effective data management." (Submission 29 – Shoalhaven City Council)

"The sections of the Code of Meeting Practice need to reflect current business and meeting practices, including the use of technology. Specifically the requirement to produce hard copy business papers." (Submission 93 – Tweed Shire Council)

"The Act should allow for Local Government to be technologically connected – taking into account advances in technology in the present and future when dealing with advertising, consultation with the community, methods of communication and delivering its services to the community." (Submission 15 – Camden Council)

Addressing - The Taskforce received a number of submissions specifically directed at the issue of property addressing. These submissions suggested that the new Act give local government the express authority for address information in NSW. *“In the best interest of community safety and service provisions give councils the authority to apply address information and the direct creation and application of all address information within their boundaries.”* (**Submission 16 – Local Government Address Working Group**)

Legal Status (Section 220) - In 2008 the Local Government Act was amended to change the legal status of NSW councils from “bodies corporate” to “body politic”. Concern was raised about *“the potential ‘unintended’ consequences’ that may arise through the removal of councils’ status as bodies corporate.”* (**Submission 98 – Local Government and Shires Association**), together with a recommendation that *“the bodies corporate status should be restored to councils...”*

v) Should the City of Sydney Act be retained and if so, how can it be improved?

Several very detailed submissions were received in support of retention of the City of Sydney Act 1988. These submissions were largely predicated on the unique nature of the City of Sydney and its importance as a global city.

- *“A separate City of Sydney Act would be, in itself, a statement of recognition by the Parliament of NSW that:*
 - *the city of Sydney is NSW’s principal city and Australia’s global city,...*
 - *arising from this unique status, the City of Sydney faces complex issues and unique challenges which require a bespoke approach to its governance*
- *A separate city of Sydney Act could and should provide a framework and positive force for a productive relationship based on mutual respect and cooperation between the Government of NSW and the Council of NSW’s principal city.”* (**Submission 17 – Lord Mayor of Sydney, Cllr Clover Moore**)

“There is a strong, evidence-based case for retaining the City of Sydney Act as it provides an effective mechanism for dealing with both State and nationally significant issues of transport and development in the centre of the most important capital city in Australia.” (**Submission 94 – City of Sydney Council**)

The submissions also pointed out that with the exception of Perth and Hobart all other State capital cities have their own Acts.

The main purposes of the City of Sydney Act are:

- to establish the Central Sydney Planning Committee and the Central Sydney Traffic and Transport Committee; and
- make provision for the non-residential voting franchise which differs from the qualifications applying in the remainder of NSW.
- make provision for special environmental planning powers, including where development is uncompleted or for conditional donations to public space improvement projects.

In 2010 the State Government commissioned an Independent Review of the Central Sydney Planning Committee. This review confirmed that the Committee was an effective mechanism for managing the City’s planning and development assessment.

While supporting the retention of the City of Sydney Act submissions to the Taskforce also included suggestions on how the Act could be improved, particularly in relation to enrolment in and maintenance of the non-residential electoral roll.

"In relation to the maintenance of the electoral roll, a number of Chamber members have expressed frustration with the requirement for non-residential and ratepaying lessee electors having to re-enrol at each and every local government election..."

The enrolment process "...could very much be simplified if a standing pro-forma application process for non-residential electors were developed." (Submission 44 – Sydney Business Chamber)

Suggestions were also received that *"It may be appropriate to expand the provisions of the CoS Act to other major metropolitan cities (such as Parramatta and Liverpool) and for major regional centres."* (Submission 44 – Sydney Business Chamber)

The Taskforce also received submissions and feedback expressing the contrary view and suggesting that there was no case for retention of a separate City of Sydney Act, as special requirements for the City should be provided for within the Local Government Act.

"The City of Sydney Act should be incorporated into the new Local Government Act. The Act should represent a whole of local government approach, not separated by different Acts for areas. This is additional red tape for staff, councillors and the community to consider." (Submission 19 – Port Stephens Council)

"Unless there are very compelling reasons to do so, all NSW local councils should be constituted and regulated by the one Act of Parliament." (Submission 35 – Manly Council)

APPENDIX II - LIST OF ABBREVIATIONS

“Act” means the *Local Government Act 1993*

“Committee” means the Local Government Project Review Committee

“Independent Panel” means the Independent Local Government Review Panel

“IPART” means the Independent Pricing and Regulatory Tribunal

“IPR” means Integrated Planning and Reporting

“LAP” means Local Approvals Policy

“LOP” means Local Orders Policy

“PPP” means Public Private Partnerships

“ROC” means Regional Organisation of Councils

“Taskforce” means the Local Government Acts Taskforce

SEPARATE ATTACHMENT

6.2.6

Future Directions for NSW Local Government
– Twenty Essential Steps





Future Directions for NSW Local Government Twenty Essential Steps

April 2013

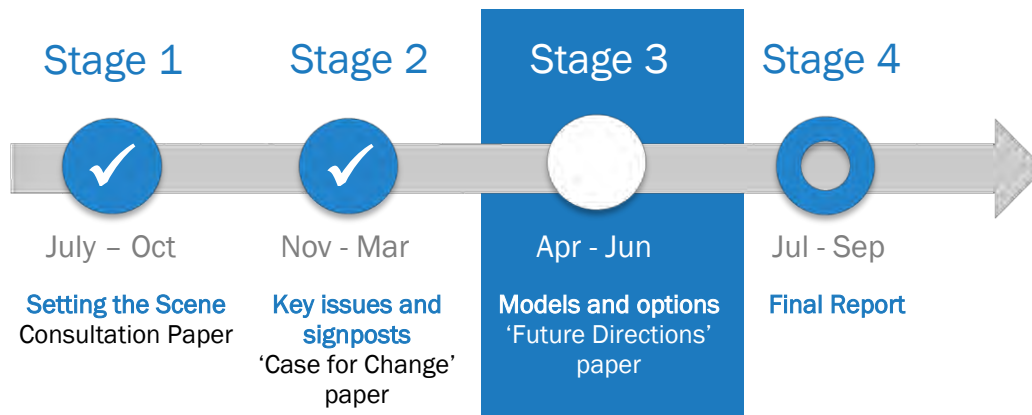
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Purpose of this Paper

This is a progress report and a basis for further consultation. It sets out the latest thinking of the Independent Local Government Review Panel as it enters the final 3-4 months of its work program. It builds on *Better, Stronger Local Government: The Case for Sustainable Change* which the Panel released in November 2012, and should be read in conjunction with that paper.

Stages 1 and 2 of the Panel's work program are now complete. The Panel's ideas are crystallising but are not set in concrete. A number of important research projects are still under way. Nevertheless, this paper fulfils the Panel's commitment to ensure that all concerned can see and discuss the likely content of its final report, now due in September 2013.



Have your Say!

The Panel will continue to consult widely over coming months. Panel members will be visiting 29 regional cities and towns and 8 locations in the Sydney metropolitan area from 9 May until 14 June 2013.

Regional and Metropolitan Councils Workshops

The Panel will be holding Workshops to discuss this paper and the options for each region with Mayors, Councillors and senior staff.

Regional and Metropolitan Community Hearings

The Panel will also be holding Community Hearings to provide the opportunity for local people and organisations to put forward their views on the various issues and proposals raised in the paper.

Full details of the Councils Workshops and how to register for the Community Hearings are available on the Panel's website.

At the completion of the consultation and close of public submissions, the Panel will then finalise its report to Government. The Panel sought and has been given an extension for the submission of its final report to September 2013, to ensure it has sufficient time to refine its proposals and consider the expected extensive feedback from this *Future Directions* consultation process.

Have Your Say!

Visit: www.localgovernmentreview.nsw.gov.au

Email: info@localgovernmentreview.nsw.gov.au

Post: Independent Local Government Review Panel,
c/- Locked Bag 3015, Nowra 2541

Comments on this paper are welcome until Friday 28 June 2013.

Preamble: Time to Act

Forty years ago, the ‘Barnett’ Committee reported on *Local Government Areas and Administration in New South Wales*. It outlined the need for radical changes in the structure and operations of NSW local government to create a more efficient and effective system. Recommendations included:

- A reduction in the number of councils from 223 to 97 overall, and from 40 to 20 in the metropolitan area (including what are now Wollondilly, Blue Mountains and Hawkesbury)
- No metropolitan council to have a population less than 100,000
- Provision for elected ‘community councils’ within larger local government areas to provide local representation and undertake delegated functions
- Use of County Councils where local councils and other levels of government need to cooperate on regional issues.

Some of Barnett’s proposals have been implemented through subsequent council mergers and the 1993 Local Government Act. There have also been valuable initiatives such as the Integrated Planning and Reporting (IPR) framework introduced in 2009. But clearly much more might have been done, and there are pressing new challenges in addition to those that motivated Barnett.

In particular, the recently released report of the NSW Treasury Corporation (TCorp) paints a disturbing picture of a local government system facing major

financial problems with apparently little awareness of just how serious the situation has become. Work needs to start immediately on assembling and implementing a package of measures to deal with the issues TCorp has identified.

A good number of NSW councils perform admirably, but many need to improve considerably and others will struggle to survive in their current form. This is no time for ‘heads in the sand’: the TCorp analysis indicates that nearly half of all councils could be rated ‘Weak’, ‘Very Weak’ or ‘Distressed’ in three years from now. This poses a potential threat not only to the local communities those councils serve, but also to the State as a whole.

The Independent Local Government Review Panel was established to advance the program of review and reform launched at the Destination 2036 forum held in Dubbo in August 2011. Its task has been to undertake a wide-ranging review looking ahead to 2036 and beyond, and to formulate options for governance models, structures and boundary changes:

- To improve the strength and effectiveness of local government
- To help drive the key strategic directions set out in the *Destination 2036* Action Plan, and to further the objectives of the State Plan *NSW 2021*.

The Panel has concluded that new directions must be pursued to transform the culture, structures and operations of NSW local government, as well as its relations with the State. This must be done first and foremost so that local government can provide better services, infrastructure and representation for the communities it is intended to serve. The Panel’s goal for local government is therefore:

A more sustainable system of democratic local government that has added capacity to address the needs of local and regional communities, and to be a valued partner of State and federal governments.

The Panel has tested all its ideas, options and proposals against that goal. Its proposals are far-reaching but far from radical. They rest on evidence drawn from the extensive literature on local government reform, previous inquiries in NSW and elsewhere, and specially commissioned research. A number echo the views of the Barnett Committee; most of the rest are based on established practice elsewhere in Australia or New Zealand, and other international models.

Of course, not everyone will agree on the conclusions the Panel has drawn from this evidence, but the Panel is confident that the reform agenda set out in this paper is realistic and soundly based. If New South Wales is once more to become ‘Number One’, as envisaged in the State Plan, then we cannot afford to wait any longer to complete the job the Barnett Committee began.

Summary of Key Proposals and Options

Sustainability and Finance

- Develop a standard set of sustainability benchmarks; require all councils to appoint a qualified Chief Financial Officer; strengthen the guidelines for councils' 4-year Delivery Programs; and place local government audits under the oversight of the Auditor General
- Improve the rating system and streamline rate-pegging to enable councils to generate essential additional revenue
- Progressively re-distribute grant funding to provide greater assistance to rural-remote councils with limited rating potential
- Establish a State-wide Local Government Finance Agency to bring down interest costs and assist councils make better use of borrowings

Infrastructure

- Maintain the Local Infrastructure Renewal Scheme (LIRS) for at least 5 years, with a focus on councils facing the most severe problems
- Create a Strategic Projects Fund for roads and bridges to help reduce the infrastructure backlog
- Investigate the Queensland model of Regional Roads Groups, as well as options for cost savings through strategic procurement initiatives
- Require asset and financial management assessments of councils seeking special assistance

Productivity and Improvement

- Introduce a requirement for regular 'best value' service reviews
- Develop a consistent data collection and performance measurement system for NSW councils, and strengthen internal and performance audit processes
- Commission a review by IPART of the regulatory and compliance burden on NSW local government

Better Governance

- Mandate ongoing professional development for councillors
- Strengthen the authority and responsibilities of mayors and require popular election of mayors in all councils with a population of 20,000 or more

- Provide additional governance options for larger councils, including a mix of ward and 'at large' councillors and a 'civic cabinet' model
- Take steps to improve Council-Mayor-General Manager relations

Structural Reform

- Establish a network of around 20 'new look', multi-purpose County Councils to undertake regional-level functions outside the Sydney metropolitan area
- Introduce the option of Local Boards to service small communities and to ensure local identity and representation in very large urban councils
- Encourage voluntary amalgamations of smaller rural councils to improve their sustainability, and convert small (in population) councils (generally less than 5,000) to Local Boards
- Promote a series of voluntary amalgamations in the Lower Hunter and Central Coast regions, including Newcastle-Lake Macquarie and Gosford-Wyong
- Seek to reduce the number of councils in the Sydney basin to around 15, and create major new cities of Sydney, Parramatta and Liverpool, each with populations of 600-800,000
- Introduce a package of incentives for voluntary mergers that offers a higher level of support to 'early movers'

Western NSW

- Establish a Western Region Authority to provide a new governance and service delivery system for the far west of NSW, based on a partnership between local, State and federal governments and Aboriginal communities

Implementation

- Appoint a Local Government Development Board for a maximum period of 4 years with a brief to drive and support a concerted program of reform
- Build on the new State-Local Government agreement to secure increased collaboration and joint planning between councils and State agencies
- Strengthen recognition of elected local government in the NSW Constitution
- Focus Local Government NSW (the new single association of councils) and the Division of Local Government on sector improvement.

1. Face the Challenges of Change

This review looks ahead to the middle years of the 21st Century. As the Panel made clear in *Case for Sustainable Change*, local government in NSW must be ready to cope with the new and tougher challenges that lie ahead, and to grasp the opportunities of change to realise its potential. NSW needs more effective local government to harness the skills and resources of local communities, improve quality of life and advance State development.

Box 1: Challenges and Opportunities of Change

- Continuing strong population growth in metropolitan areas, along the coast, and in some regional centres
- The importance of maintaining Sydney as Australia's premier 'global city'
- Intensifying challenges of urban management, including housing supply and affordability, transport and environmental quality
- Infrastructure provision and renewal
- Declining populations (but not necessarily economies) across most of inland NSW and especially in the far west
- An ageing population, with population growth in some areas consisting largely of retirees
- The economic imperative of increased efficiency and productivity
- Opportunities for further mining projects, but also for Australia to become a major 'food bowl', and potential conflicts between the two
- Continuing and probably worsening environmental concerns
- Social change, with an evolving mix of people and cultures
- Increasing spread of new information and communications technologies and social media, with the potential to transform concepts of space and methods of service delivery
- A much tighter fiscal environment that will require all governments to review revenue and expenditure policies, and severely limit the scope for increased grants to local government.

Sadly, there is mounting evidence to show that the current system of local government in NSW is simply not up to the task. The Panel's investigations and consultations have revealed a NSW local government sector that is weighed down with too many out-of-date ideas, attitudes and relationships. Now it is also clear that the financial base of the sector is in urgent need of repair: many councils face very serious problems that threaten their sustainability and provision of adequate services to local communities. Put simply, there are too many councils chasing too few resources.

Whilst there are many in the sector who understand the need for change, there seems to be a lack of collective will to embrace significant reform, and loud voices that favour 'muddling through' without tackling the fundamental structural issues identified by the Barnett Committee four decades ago. Yet without extensive reform it is likely that the sector will see its powers, authority and credibility further eroded and that many councils will slide irrevocably into irrelevance. The losers will be local and regional communities in particular, and the State as a whole, as valuable resources and essential skills needed to tackle future challenges go to waste.

This is not just an issue for local government. To respond to the challenges governments at all levels will need to work together more closely and pursue shared goals. In NSW, this means in particular that more needs to be done to improve State-local relations, building on important recent initiatives and especially the recently signed State-Local Government agreement.

As many people have said to the Panel over recent months, this review offers a 'once in a generation' opportunity: an opportunity to place NSW local government on a long-term sustainable footing and secure its place in the Australian system of government well into the 21st Century. It would be a tragedy if that opportunity was cast aside simply because change is too uncomfortable.

2. Create a Sustainable System

In *Case for Sustainable Change* the Panel set out two fundamental elements of its approach to reform:

- Looking at the *whole system* of local government, not just councils themselves
- The need to focus on the overall *strategic capacity* of councils to support their communities, rather than simply seeking efficiencies and cost savings.

Figure 1: The Local Government System

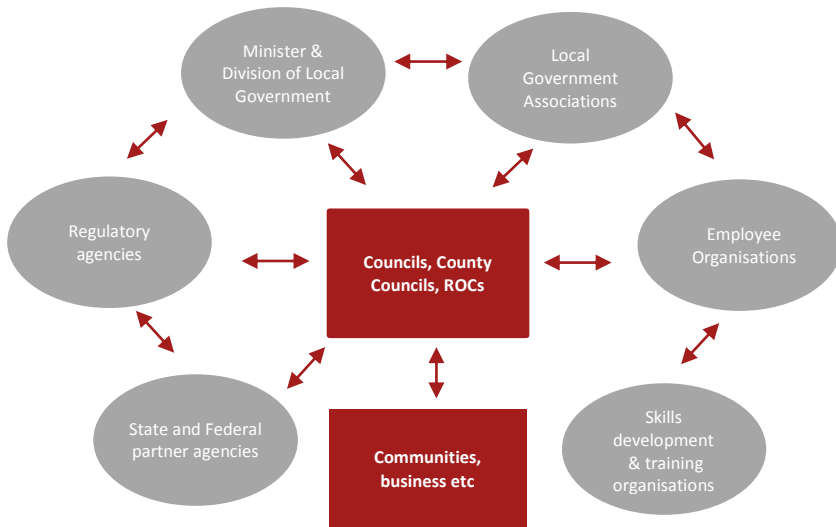


Figure 1 shows the various elements of the local government system and the complex inter-relationships involved. Significant changes to any part of the system will have ripple effects throughout and these must be taken into account. For example, creating stronger, more capable councils will engender changes in their roles and relationships vis-à-vis State and federal agencies, in the way they are overseen and regulated by the State

government, and in their needs for professional and skills development and training. Reform proposals must take those systemic adjustments into account.

Box 2 updates the Panel's thinking about essential elements of an effective system of local government, previously set out in *Case for Sustainable Change*. Feedback received suggests broad support for those ideas.

Box 2: Essential Elements of an Effective System of Local Government

- Councils with the scale, resources and 'strategic capacity' to govern effectively and to provide a strong voice for their communities
- Maintenance of a strong sense of local identity and place
- Councils with an adequate revenue base (own source or grants) relative to their functions, healthy balance sheets, and sound financial management
- Councils renowned for their efficiency and focus on outcomes, based on the Integrated Planning and Reporting framework
- Regional groupings of councils that share resources on a large scale and jointly plan and advocate for their regions
- Councils that have highly skilled mayors, councillors and executive teams; and are respected by the State government and community alike
- Mayors who are recognised leaders both within the council and throughout the local community, and enjoy a positive reputation for that leadership.
- An electoral system designed to ensure that as far as possible councils are representative of the make-up and varied interests of their communities
- A Local Government Act that minimises prescription and provides a range of options for the way councils and regional bodies are structured
- Effective mechanisms for State-local consultation, joint planning, policy development and operational partnerships
- A local government association that is focused on strategy; a well-informed, dynamic advocate; a leader in reform; and a troubleshooter
- A constructive relationship between employers, employees and employee organisations, focused on improving productivity, performance and rewards.

Strategic capacity

As part of this systems approach, the Panel aims to enhance the capacity of councils individually and local government collectively to play a much stronger role in the broader system of government. In its 2007 report the Queensland Local Government Reform Commission argued that the challenges facing the State “... require governments of all levels to be high capacity organisations with the requisite knowledge, creativity and innovation to enable them to manage complex change....”

The concept of ‘strategic capacity’ highlights this aspect of reform: the need for councils or groups of councils to have the ability to respond to the diverse and changing needs of different communities, and to take on new functions or deliver improved services in order to meet those needs. This implies a move to larger, more robust organisations that can generate increased resources through economies of scale and scope and then ‘plough back’ efficiency gains into benefits for their communities (see Box 3).

Box 3: Key Elements of Strategic Capacity

- More robust revenue base and increased discretionary spending
- Scope to undertake new functions/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/unexpected change

A flexible set of structures

The challenge is to balance the need for increased scale to create strategic capacity, with keeping the ‘local’ in local government. The Panel’s approach has been to design a new set of local government structures that can be ‘mixed and matched’ in different ways in response to the varying needs of communities and regions. The Panel has said from the outset that there can be no ‘one-size-fits-all’. Proposed structures comprise:

- Multi-purpose County Councils – statutory groupings of local councils established under the Local Government Act that can undertake a range of ‘high-level’ functions on behalf of their members (the precise mix of functions can vary from region to region)
- ‘Standard’ local councils operating along very similar lines to the current provisions of the Local Government Act, except for the referral of some strategic functions to the new County Councils

- ‘Local Boards’ – a new type of *elected, community-based* local government unit with limited responsibilities delegated from a local council or County Council.

Local Boards are discussed in section 3.

‘New look’ County Councils

NSW already has 14 County Councils with varying responsibilities for a variety of functions including water supply, floodplain management and control of weeds. However, these are all special-purpose organisations. The Panel is looking for ‘new look’ County Councils that will undertake a broad range of strategic functions to support their member councils, strengthen the system of local government, and enable better working relations with State agencies.

The Panel is NOT proposing a ‘fourth tier of government’, nor an additional set of large bureaucracies. ‘New look’ County Councils would replace existing regional organisations. Local councils more or less as we know them today would remain the core of the system: they would ‘own’ and resource the County Councils in the same way many do now. Some regional functions would be referred to the County Councils which would then work alongside their member councils in performing those tasks.

The Local Government Act already contains flexible provisions in relation to the establishment and operation of County Councils. With a few minor amendments, those provisions can be used to create the type of organisation the Panel has in mind (see section 14 for more detail).

The need for amalgamations

The Panel's terms of reference require it to consider 'options' for boundary changes. The 'amalgamation debate' was discussed in *Case for Sustainable Change* and need not be repeated here. Amalgamations and boundary changes are not the panacea for local government's problems. However, the Panel has no doubt that they are an essential element of a wider package of reforms. Creating a sustainable system that can make the best use of limited resources and cope with the challenges of a changing world must involve some amalgamations of existing councils, large and small, urban and rural. There is simply not enough revenue or sufficient numbers of skilled staff to sustain 152 councils across NSW.

New evidence on the need to tackle financial problems is presented in the next section. In the Panel's view, the financial and other challenges facing councils cannot and should not be resolved simply by increasing grant support: taxpayers cannot be expected to support councils that are unnecessarily small, lack capacity and build unnecessary costs into the system. Mergers should be pursued where they can make a substantial contribution to addressing financial problems, reducing fragmentation of resources and duplication of effort, and building strategic capacity for the long term. Capacity should be *further* enhanced through regional collaboration via the new County Councils.

In metropolitan areas, amalgamations and more effective sub-regional arrangements will be needed to establish a system of local government that has the capacity to be a real partner of State and federal governments in addressing the challenges of growth and change well into the mid-21st Century, when Sydney's population will be around 7 million.

Options for boundary changes are detailed in sections 13 to 16. They will be the subject of further consultation before the Panel finalises its proposals.

The issue of 'forced amalgamations'

The Panel is also required to take into account the State government's policy of 'no forced amalgamations', recently reiterated by the Minister for Local Government, and to explore barriers and incentives for voluntary mergers. The Panel's interim conclusions on barriers and incentives to give effect to the Government's policy are presented in section 20.

Setting out desirable options for boundary changes is NOT the same as recommending forced amalgamations. Moreover, under the current provisions of the Local Government Act, amalgamations cannot occur without extensive community consultation on the specific proposals involved. This would have to be a *further step* after the Panel completes its work, and would involve the Boundaries Commission which includes local

government representatives. Thus whether or not the Panel's options for amalgamations are pursued is entirely a matter for the State government and the councils and communities involved.

The Panel is concerned, however, that on current indications there is little likelihood of voluntary amalgamations occurring on the scale required, and in a suitable pattern, to deliver the strategic outcomes that are needed to address future challenges. This applies especially in the metropolitan area, and is one of the reasons why the Panel has explored the option of County Councils.

Arguments about amalgamations are essentially a distraction from the core issue, which is how the role and capacity of NSW local government can best be strengthened in the interests of the communities it is expected to represent. That objective will not be achieved by self-interest or special pleading. It requires a willingness to take a fresh look at the system of local government and its relationship with the State, and to explore new options with an open mind.

Preferred Options for Consultation

- Add multi-purpose, 'new look' County Councils and in some areas new Local Boards to the system of local government structures
- Accept the need for some amalgamations to facilitate better, stronger local government in the interests of local communities

3. Keep the ‘Local’ in Local Government

Whilst there is a need for increased scale in some aspects of the local government system, submissions to the Panel have rightly stressed the importance of keeping the ‘local’ in local government – the sense of place and community identity that is so important to the quality of people’s lives.

Opponents of amalgamation rely heavily on the argument that local identity will be lost in bigger local government units; that larger councils will pay less attention to specific needs of different suburbs or neighbourhoods and will fail to take steps to maintain their character. Certainly people may fear that this will happen, and there have been a few cases (just five, including four recently in Queensland) where community pressure has led to de-amalgamation.

However, the Panel can find no evidence that loss of local identity is an *inevitable consequence* of creating larger local government areas. What does seem clear is that very rarely communities are so different, or so fiercely independent, that forcing them to share a local council is probably unwise. Experience also suggests that special efforts need to be made after an amalgamation, or in a large, growing local government area, to support local identity at the level of suburbs and townships, or in the pre-existing council areas. Many councils have done this successfully and the concept of ‘place management’ is well understood.

Clearly, it is simply not possible to have a separate council for every identifiable place or community. That would mean, for instance, dividing Sydney into hundreds of suburban council areas. The Panel therefore believes that a range of methods have to be used to keep the ‘local’ in larger local government areas. These can include:

- ‘Place management’ approaches as mentioned above, with community committees, suburb or townships plans and development projects, and local service centres
- Dividing local government areas into wards, with ward councillors convening local committees or forums
- Using new technologies to establish closer contact between councils and their communities, to inform and engage local people, and to conduct ‘citizens panels’ or online forums to explore community views and ideas
- Modern customer service systems that ensure swift replies to requests for information and rapid responses to problems or concerns.

Local Boards

As indicated in the Section 2, the Panel sees a need for an additional *option* for community governance in the form of ‘Local Boards’. This idea revives the Barnett Committee’s proposal 40 years ago for ‘Community Councils’; it also echoes experience with similar structures in Britain and New Zealand.

Local Boards would have perhaps 5-7 elected members and would carry out functions delegated to them by an individual council or County Council. They could be established:

- To replace small rural or remote councils that lack the capacity to undertake a full range of local government functions – as a general rule, the Panel considers that conversion to Local Board status would be appropriate for councils with current or projected populations of less than 5000
- To provide representation and some delegated service delivery at suburb or district level within very large metropolitan councils
- As a transitional measure to ensure continued community identity and representation when several existing small-medium councils are amalgamated into a much larger local government area.

A new set of legislative provisions would be required for Local Boards and the Panel will be formulating those in detail over the next three months, after consultation with the Local Government Acts Task Force and other key stakeholders.

The Panel has commissioned a study to help formulate more detailed recommendations on how Local Boards would be established and operate. This will be published for discussion as soon as possible.

4. Confront Financial Realities

The recent report of the NSW Treasury Corporation (TCorp) on the *Financial Sustainability of the NSW Local Government Sector* makes disturbing reading. TCorp defined sustainability in the following terms:

A local government will be financially sustainable over the long term when it is able to generate sufficient funds to provide the levels of service and infrastructure agreed with its community.

This definition takes into account the effect ongoing change could have on a Council's operating position and service levels over the long term.

TCorp's methodology

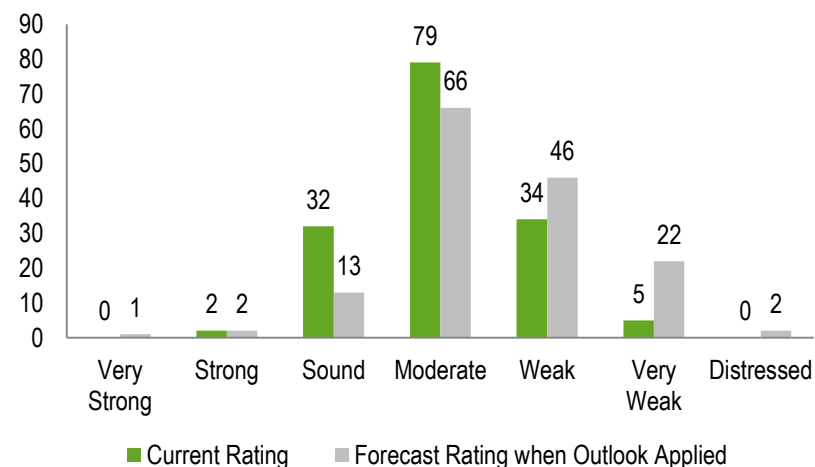
TCorp allocated all councils a Financial Sustainability Rating (FSR) on a scale from Very Strong to Distressed. A council needs to be assessed at a Moderate or higher level to be acceptable in terms of its sustainability. A Moderate level FSR is on average equivalent to marginally exceeding the benchmarks utilised in TCorp's assessment process.

Councils were also assigned a short-term Outlook rating of Positive, Neutral or Negative. A Negative Outlook is a sign of a general weakening in performance and sustainability. Hence a council with a FSR of Moderate and an Outlook of Negative, is assessed as being in a deteriorating position or at risk of being downgraded from Moderate to Weak. This makes it clear that, on its own, a Moderate rating is by no means a 'clean bill of health'. Councils rated Moderate-Negative or worse should *urgently* consider options to address areas of poor performance in order to avoid becoming steadily more unsustainable.

As shown in the figure below, in 2012 around 75% of NSW councils achieved a rating of Moderate or better. However, only two councils were rated Strong. Moreover, only five councils had a Positive Outlook, while 73 – nearly half of all councils – rated Negative. This means that the overall position of the sector is likely

to get significantly worse over the next three years, and that by 2015 well over 40% of councils could be rated Weak, Very Weak or Distressed.

Figure 2: Financial Sustainability Ratings with Outlooks



Key findings and recommendations

TCorp's key findings may be summarised as follows:

- Operating deficits are unsustainable.** Most councils are reporting operating deficits and a continuation of this trend is unsustainable. In 2012 only one third of councils (50) reported an operating surplus. Moreover, the figures for 2012 significantly understate the problem, because the federal government prepaid half of its 2013 Financial Assistance Grants to councils. Removing the impact of this prepayment increases the deficit for 2012 by \$181m to \$469m.
- Sustainability is deteriorating.** Sustainability is expected to deteriorate over the short term for nearly 50% of all councils, based on their current Long Term

Financial Plans. Should the current Outlooks eventuate, 70 of the 152 councils in NSW would be rated as Weak or worse within three years.

- **There is a large an annual asset maintenance gap.** Councils' reported expenditure shows an annual shortfall in spending on asset maintenance. In 2012 alone, the reported maintenance gap was \$389m across the local government sector, and the total for the last four years is \$1.6b.
- **The infrastructure backlog has yet to be addressed.** Achieving an annual breakeven operating position would provide councils with adequate funds to meet future requirements for maintenance of assets and services, but on its own would not be sufficient to address the cumulative infrastructure backlog of \$7.2b reported in 2012, nor any additional maintenance funding gaps that may be identified as data improves.
- **Regional performance varies.** There is a higher proportion of councils rated as Weak and Very Weak along the north coast and in the far western regions compared to others. Notably, there are also several 'Weak' councils in the metropolitan region.

TCorp goes on to recommend that:

- At least breakeven annual operating positions are essential
- Rate increases must meet *underlying* costs as well as annual growth in expenditure
- Medium-term pricing paths are needed for ongoing adjustments to rates and charges
- Asset management planning must be prioritised
- Councillor and management capacity must be developed

- The system and guidelines for accessing restricted funds should be reviewed
- Increased use of borrowings.

These recommendations are discussed in more detail later in this paper.

'Councils at risk'

Based on the TCorp analysis, population projections and the 'cluster-factor' analysis it commissioned, the Panel has made an assessment of those councils that could be deemed to be 'at risk'. They are shown on Map 1. Risk was assessed based on combinations of several factors:

- FSR of Moderate with Negative Outlook or worse (all councils with a Weak FSR were included automatically)
- Projected population less than 10,000 in 2036
- Projected decline in population or only marginal growth
- Low rating base.

The Panel's assessment identified 55 'councils at risk' in non-metropolitan NSW, 8 along the north coast between the Hunter and the Queensland border, and 7 in or around the Sydney metropolitan area. Options for each of these groups of councils are discussed in sections 13 to 17.

A multi-pronged response

The TCorp report confirms the Panel's view that underlying weaknesses in the financial position of NSW local government have been allowed to build up for far too long. This is due to misdirected policies at both State and local levels; lack of technical and financial expertise in many councils; inadequate, inconsistent data; and poor long term planning. There is no point in seeking to

apportion blame: what is needed is a healthy dose of reality-testing and acceptance that there are no easy answers.

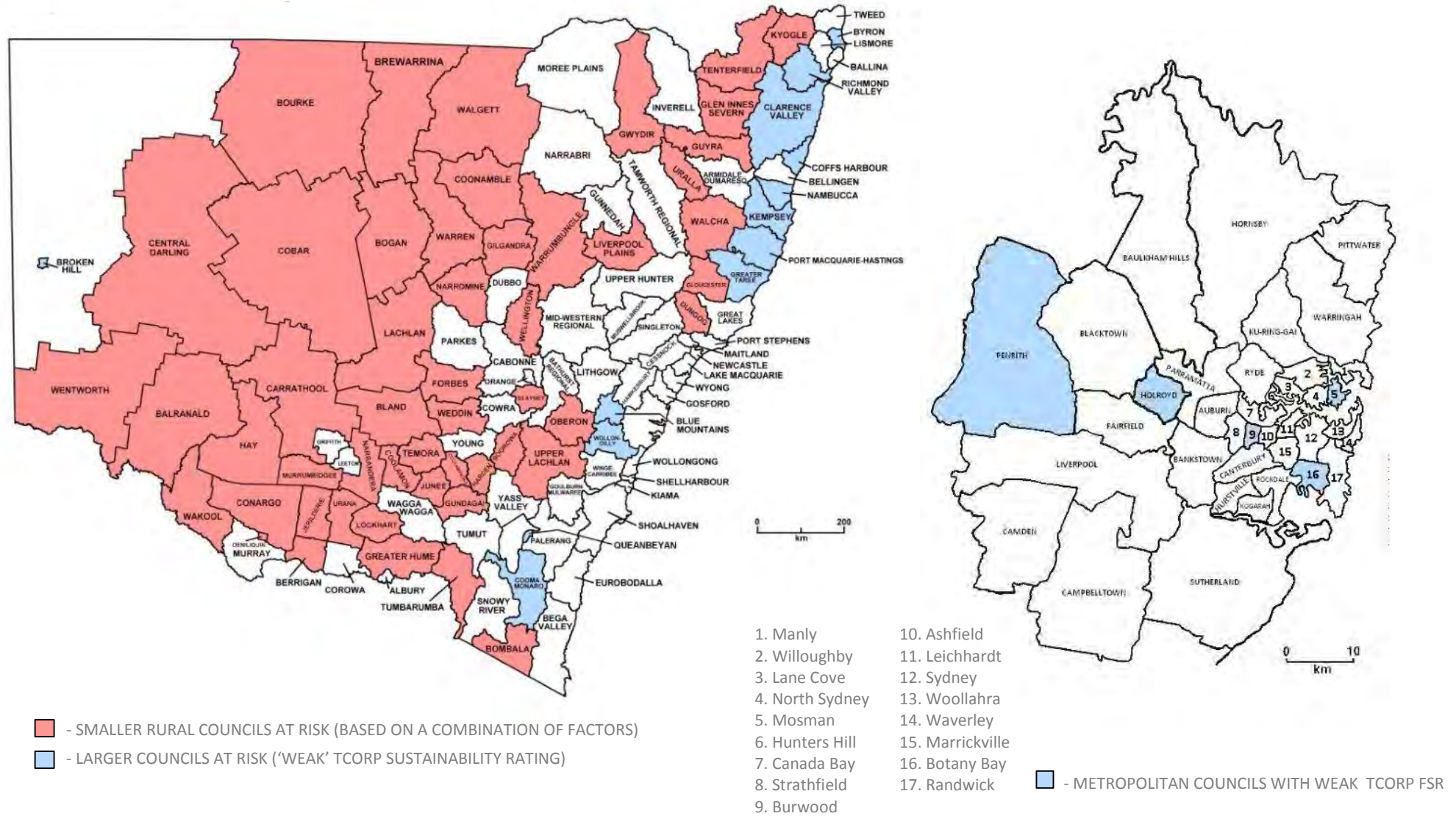
Addressing the issues will be uncomfortable for all concerned: politicians, senior managers, staff and ratepayers. As TCorp makes clear, a concerted, medium-long term strategy is required. The Panel believes that this will need to combine fiscal discipline with improved financial and asset planning, accelerated increases in rates and charges where required, redistribution of grant funding, and improved efficiency and productivity.

The Panel's proposals relating to financial management are set out in the next five sections. A valuable start has been made with the introduction of IPR, changes to the rate-pegging guidelines for 2013-14, and the State government's Local Infrastructure Renewal Scheme (which points to the need to make more use of borrowings where appropriate). There are signs of a growing awareness and understanding of the issues in some quarters, but there is also widespread resistance to taking the hard decisions involved. Only 23 councils have applied for a Special Rate Variation in 2013: the TCorp findings suggest that number is merely the tip of the iceberg. The Panel urges all concerned to take a fresh look at the facts.

Preferred Options for Consultation

- TCorp, the Division of Local Government and Local Government NSW should conduct a series of seminars with councils to explain the TCorp findings and their implications
- Adopt the TCorp recommendations and adjust policy-settings accordingly.

Map 1: Councils at Risk



5. Ensure Fiscal Responsibility

Implementing TCorp's recommendations will require a concerted, long term effort to improve the quality of financial planning and management in local government. The Panel believes that the starting point has to be a new focus on what it terms 'fiscal responsibility' – by which asset and financial management, the level of rates and charges, distribution of grants, setting of service standards, performance improvement and audit practices are all aligned to achieve the long term goal of financial sustainability. This requires a cooperative approach between councils and the State government, and a start needs to be made urgently before the problems identified by TCorp get worse.

As indicated in *Case for Sustainable Change*, 'fiscal responsibility' does not mean simply keeping rates and expenditure as low as possible and remaining debt free. On the contrary, in many cases the more responsible approach is to face up to the need to increase rates and charges in order to achieve an operating surplus and undertake essential asset maintenance; and then where necessary to borrow additional funds to tackle infrastructure backlogs.

Sustainability benchmarks

The TCorp analysis used a wide range of financial ratios to assess and benchmark councils' performance. TCorp makes the point that further development of benchmarking data and methodologies is required to strengthen the assessment framework. This is discussed further in section 9. An agreed set of sustainability benchmarks and rigorous collection of relevant data to calculate relevant ratios would be a central element of such a framework. The Institute of Public Works Engineering and the Australian Centre of Excellence for Local Government have proposed a small set of nationally consistent ratios as a starting point. The ability to make comparisons with the performance of local government in other states would add considerably to the value of benchmarking. The Panel understands that the Division of Local Government is currently exploring this issue.

Capacity for asset and financial management

TCorp makes the point that many councils across NSW still appear to be having difficulty both in meeting the asset and financial planning requirements of the Integrated Planning and Reporting (IPR) framework, and in handling various aspects of financial management. TCorp goes on to make a series of recommendations including the need to:

- Review some elements of the IPR guidelines
- Assist councils with financial planning
- Improve management of liquidity
- Offer support to councils in respect of complex procurement tasks
- Provide additional training programs for councillors and staff
- Undertake regular independent reviews of councils' financial position.

The Panel endorses these proposals. It understands that the Queensland Treasury Corporation undertakes reviews of a sample of councils each year, in addition to those seeking to borrow. Further ideas for assistance to councils in long term asset management and financial planning, as well as training, are set out in sections 7 and 8. As well, TCorp could play an ongoing role in providing guidance.

Two underlying issues here are the continued existence across NSW of many small councils with limited staff resources; and a shortage of personnel with necessary financial and asset management skills. In addition, the Panel notes that there is at present no statutory requirement for a council to employ a properly qualified chief financial officer. 'Fiscal responsibility' will remain an elusive goal unless these aspects are addressed.

Guidelines for Delivery Programs

Under the IPR framework, a newly elected council must now prepare a 4-year Delivery Program to set out its programs and financial strategy for the balance of its term of office. The Panel's investigations suggest that this aspect of IPR needs further attention, so that its Delivery Program fully reflects a council's long term asset and financial plans, and embeds fiscal responsibility.

The Delivery Program is potentially the centrepiece of sound asset and financial management, and hence the effort to ensure long term sustainability. The Panel has therefore prepared suggested guidelines for Delivery Programs to achieve those objectives (see Box 4).

Box 4: Suggested Guidelines for Delivery Programs

A Delivery Program should:

- Give effect to long-term financial and asset management plans prepared fully in accordance with IPR guidelines, and certified as such by the Mayor and General Manager
- Contribute effectively to progressive elimination of an operating deficit
- Establish a 4-8 year 'price path' for all categories of rates linked to specific proposals for ongoing and/or improved infrastructure and services
- Clearly justify any proposed increases in services or new assets, based on regular service reviews and community consultation to determine appropriate levels of service
- Incorporate substantially increased funding for infrastructure maintenance and renewal
- Apply increased borrowing to meet infrastructure needs wherever appropriate and financially responsible
- Ensure a fair and reasonable distribution of the rate burden across categories of ratepayers, avoiding undue imposts on households and businesses
- Include measures to bring about ongoing improvements to efficiency, productivity, financial management and governance.

A new approach to auditing

Another issue raised by TCorp is the desirability of a more consistent approach to auditing of annual financial statements and collection of data on asset maintenance and infrastructure backlogs. Whilst it has no doubt that auditors undertake their tasks in a professional manner, the Panel is concerned that the current system whereby councils individually tender for audit services creates a tendency to minimise the amount of work involved, and hence the cost. This means that the potential for auditors to contribute to improving financial management and fiscal responsibility can be restricted.

The Panel has concluded that NSW should follow the example of Queensland and Victoria in placing local government audits under the oversight of the Auditor General. Most of the work would continue to be carried out by private firms, but under contract to the Auditor General, who would ensure quality and consistency. The Auditor General would also prepare an annual overview report to Parliament, providing an independent assessment of the financial health of the local government system. The Panel sees this as a major step forward for the sector.

There are various ways to establish a legal basis for this new approach. Provisions could be added to either the Local Government Act or the Public Finance and Audit Act; local government could be treated along very similar lines to State agencies, or special provisions could be drafted to reflect its different character. These options need to be discussed in more detail over coming months, and the Panel expects to include definitive recommendations in its final report. Improvements to other aspects of auditing are raised in section 9.

Preferred Options for Consultation

- Develop a standard set of sustainability benchmarks
- Address the underlying capacity issues in small councils
- Require councils to appoint a qualified Chief Financial Officer
- Adopt guidelines for Delivery Programs along the lines suggested in Box 4
- Place local government audits under the oversight of the Auditor General.

6. Bolster the Revenue Base

NSW needs a local government sector that is financially robust and can truly partner with the State Government in delivering essential services and infrastructure. Recent Australian and New Zealand inquiries into rates have all found that they provide a sound and appropriate tax base for local government. However, further measures should be considered to improve the rating and revenue framework and to address the needs of those rural and remote councils that will always have a weak rating base. As well, potential additional new sources of revenue should be explored (see below).

The rating system

The Panel has commissioned independent research into the NSW rating system, including comparisons with the systems in other states. Key findings and proposals are summarised in Box 5. Overall, the research has found that the NSW system is basically sound, but that a number of improvements should be made to the way it operates. Additional guidance for councils is needed in areas such as applying taxation principles and use of special rates. The Panel will follow-up these and other issues raised in Box 5 during the next phase of its work. It has concluded, however, that councils should be required to review their rating systems regularly to ensure that they are up-to-date and fit for purpose, and that, as indicated in the previous section, more rigorous revenue policies should form part of 4-yearly Delivery Programs.

Rate-Pegging

In the current fiscal climate the Panel sees no likelihood of significant increases in grant funding for NSW local government. Also, there is considerable evidence to suggest that many councils can make better use of their rating base to achieve significant increases in own-source revenue, and that this can be done without undue impacts on household budgets. Affordability must remain a key objective. Experience in other states and the results of community surveys suggest that increases of \$1-2 per week would be acceptable for most NSW ratepayers. This should be sufficient to address many of the problems identified by TCorp.

Box 5: The NSW Rating System and Potential Improvements

- Total council revenues in 2011-12 were \$9.245bn; 52% came from rates and annual charges (including water)
- There may be scope to raise a greater share of revenue from fees and charges levied on services akin to 'private goods' eg leisure centres
- Rates are a tax, not a fee-for-service; they need to be set in accordance with principles of taxation – equity, efficiency, simplicity, sustainability and policy consistency
- There is a case for moving from Land Value to Capital Improved Value as the basis for rates to better reflect capacity to pay and the shift to apartment living, but this would be costly and disruptive
- Other options to generate increased rate revenues from apartments need to be explored
- Existing options for minimum rates and base charges should remain, but overly complex use of those mechanisms should be restricted
- Differential rates are an important part of the system but their current use by some councils is too complex and poorly justified
- There is considerable potential for greater use of special rates
- Some concessions for disadvantaged ratepayers are justified, but social welfare should not be a local government responsibility; arrangements for pensioner concessions should be reviewed
- Income poor but asset rich ratepayers should be able to defer payment of rates as a charge against their property, rather than receive a concession
- The extent of non-rateable land and concessions for government business enterprises as well as the properties of benevolent institutions that serve a much wider area than that of the council concerned, should be reviewed
- Councils are failing their communities if they do not make necessary applications for Special Rate Variations above the rate-pegging cap.

The Panel's view is that the system of rate-pegging in NSW has impacted adversely on sound financial management. It creates political difficulties for councils that really should raise rates above the peg, and adds administrative costs. It is not applied in other states. The Panel's preference is for the system to be abandoned, subject to the imposition of the new fiscal responsibility framework outlined in section 4. However, the Panel accepts that rate-pegging has been in effect for over 30 years and is now part of the landscape in NSW. A proposal to abolish it completely may well prove unacceptable at this time.

As an alternative, the Panel believes that the rate-pegging arrangements can be simplified and streamlined. The provisions of the Local Government Act can be applied more flexibly with reduced demands on councils for special documentation and additional community consultation. The Panel's approach is presented in Box 6. It has been developed in close consultation with IPART and builds on the revised rate-pegging guidelines for 2013-14, which link applications for Special Rate Variations (increases above the annual peg) more closely to Integrated Planning and Reporting requirements.

The TCorp report makes it clear that rate revenues need to grow not only to cover annual cost increases faced by councils, but also *underlying* costs of service delivery, including progressive elimination of operating deficits and funding infrastructure needs.

Increased flexibility for councils to set rates within a margin of 3% above the rate-pegging cap was proposed by IPART. It would add around 50 cents per week to the average residential rate. The Panel will undertake further investigations to determine whether this amount is sufficient to enable most councils to tackle the problems identified by TCorp.

In addition to the proposals in Box 6, the Panel believes that consideration should be given to exempting Special Rates from the cap, where they are levied on a small group of ratepayers or a specific area in order to undertake defined projects, and the projects have been shown to enjoy majority support amongst those affected.

Box 6: Streamlining Rate-Pegging

The Panel proposes that, within a framework of enhanced fiscal responsibility, councils be allowed to increase rates by up to 3% more than the annual cap set or projected by IPART for the following 4 years, provided documentation certified by the Mayor and General Manager shows that:

- Appropriate and effective community engagement, tailored to local needs, has been undertaken in reviewing the Community Strategic Plan and preparing the council's 4-year Delivery Program, and details of those engagement processes have been documented in the Special Variation proposal
- The Delivery Program meets the criteria set out in Box 4
- The Delivery Program and 'price path' have been endorsed by the council's auditor or another suitable independent party as being soundly based and warranted to ensure the council's long term sustainability
- The council is taking other necessary steps to improve asset and financial management.

In addition, the Panel proposes that:

- Section 509 of the Local Government Act be amended to enable the Minister to exempt a council from rate-pegging on the basis of demonstrated high performance in asset and financial management.

Under the Panel's proposals IPART's role would be modified to cover:

- Random audits to ensure the criteria are being satisfied
- Determining applications for increases greater than 3% above the cap
- Advising the Minister when a council warrants exemption from rate-pegging.

Where an audit shows that a council has failed to meet the new criteria for Delivery Programs and/or Special Variations, the current rate-pegging arrangements would be re-applied.

Development contributions

Over recent years the NSW Government has substantially reduced the scope for councils to levy financial contributions on developments in order to fund new and improved infrastructure and community facilities. Further steps are proposed in the recently released White Paper on the planning system. The Panel understands the Government's objectives, and will seek further discussions to ensure that the ability of councils to address other infrastructure and asset maintenance needs (including backlogs identified by TCorp) is not compromised, and that there is no undue impact on ratepayers.

Distribution of grants

The geography of NSW means that there will continue to be a substantial number of smaller councils and rural or remote communities that are heavily dependent on grant support. This means that every effort must be made to ensure that the available pool of funds is used in the most effective and equitable way possible.

The principal source of funds is the federal government through both Financial Assistance Grants (FAGs) and the Roads to Recovery program. The former are distributed by the NSW Local Government Grants Commission, whilst the latter are paid directly to councils from Canberra under a set formula. FAGs are split into 'general-purpose' and 'roads' components, although both are untied and can be used as councils see fit. All councils are entitled to a per capita grant: under the current law

30% of the general-purpose component must be set aside for that purpose.

The effect of the current arrangements is that large amounts of assistance are paid to some councils that could make do with less. This has been highlighted in several reviews. The Panel believes that in a climate of fiscal restraint, where the total grant pool is highly unlikely to increase significantly and may even decline, consideration needs to be given to the option of redistributing more funds to the most needy councils and communities.

The formula for distributing FAGs in NSW has not been externally reviewed for several years. Given the findings of other reviews, the Panel considers that changes are warranted, with a view to freeing-up some funds for redistribution. The Panel notes that the quantum of FAGs grows by around 4% per annum, so there is scope to effect re-distribution progressively without causing severe disruption (provided, of course, rates can be increased to fill the gap).

The Commonwealth Grants Commission (CGC) is currently undertaking a wide-ranging review of FAGs. Its terms of reference mention in particular the impact of the minimum grant requirement, and the needs of local governments serving regional and remote communities. This suggests that more sweeping changes could be in the offing.

The Panel also sees specific opportunities to change the way the FAGs roads component and Roads to Recovery grants are allocated. These are discussed in section 7.

If there is to be any significant re-distribution of grant funding to smaller rural and remote councils, then it is only proper that those councils be required to take steps to maximise their efficiency and help themselves. On no account should other ratepayers be expected to 'prop up' councils that are simply too small to remain viable organisations, or that fail to maximise their own-source revenues. This would be made clear as part of the overall package of reforms the Panel is putting forward.

A local government finance agency

TCorp has again highlighted the scope for councils to increase borrowing. Of course, debt is not revenue: it must be repaid using other funds. However, it is an essential tool to ensure inter-generational equity by financing long-lived assets, and to smooth out 'lumpy' patterns of expenditure on major projects.

Appropriate use of debt is therefore to be encouraged, but there is an evident problem in NSW with excessive rates of interest being paid by some councils. Local government is generally a low-risk borrower. Moreover, if councils are paying too much, the benefits flowing from the Government's Local Infrastructure Renewal Scheme, which subsidises borrowings, are being greatly reduced.

In Queensland, South Australia and New Zealand local government borrowings (and some investments) are handled collectively by a state-wide agency. The models differ, but in each case the effect is to maximise local government's consumer power to contain borrowing costs. The Panel

understands that investigations are proposed to establish a similar arrangement in NSW. It strongly endorses that move.

Supplementary revenue options

Over the years a number of reports have canvassed various opportunities for local government to make greater use of revenue options other than rates. Options such as tourism or local sales taxes have been raised on several occasions, but have always proved problematic. Other possibilities include:

- Greater use of fees and charges to fund services that are in the nature of ‘private goods’ – swimming pools, leisure centres etc
- Asset sales to fund new or replacement infrastructure, including rationalisation of facilities such as road reservations, open space, community halls and libraries
- Commercial ventures such as stormwater harvesting and carbon trading, already being carried out by some councils around Australia
- Road user charging, including increasing revenues from on-street car parking and a share of heavy vehicle charges
- Tax increment financing – using special rates to tax the increased value of land where development takes place on the back of public infrastructure provision eg high density residential development around railway stations.

A recent report for the Local Government Association of South Australia suggested a joint State-local government effort to explore these options in detail. New revenue sources are certainly not the whole answer to councils’ financial problems, but it is important that NSW local government does not get left behind in exploring these options.

Preferred Options for Consultation

- Improvements to the rating system and practices as set out in Box 5
- Streamlining of rate-pegging as proposed in Box 6
- Progressive re-distribution of grant funding to provide greater assistance to those councils with limited rating bases, provided they are taking all possible steps to help themselves
- Establishment of a State-wide Local Government Finance Agency
- Ongoing examination of supplementary revenue options.

7. Tackle the Infrastructure Backlog

The TCorp report makes it clear that tackling local government's annual asset maintenance gap and the cumulative infrastructure backlog warrants the highest priority. Economic development, community wellbeing and much of local government and private or third sector service delivery all depend on adequate infrastructure, especially roads, bridges and buildings.

TCorp now estimates the backlog at over \$7 billion. This may or may not be an accurate figure: it is based on unaudited council data and untested assessments of the extent to which assets need to be upgraded. It might be reduced substantially if councils revise acceptable service levels with their communities – for example, replacing dual-lane bridges with cheaper single lane structures or culverts, or even low-level crossings that might be closed a few times each year. On the other hand, important environmental works (eg pollution traps to improve water quality, or revegetation of eroding stream banks) may have been excluded from the calculations, so that the backlog has been underestimated.

This uncertainty, and the need to formulate sensible strategies to address the backlog, highlights the importance of further improving asset and financial planning. TCorp identified some continuing weaknesses in these areas and called for ongoing efforts to enhance performance, including upgrading the skills of both managers and

councillors to develop and implement appropriate plans and programs.

Nevertheless, there is no doubt that the sheer scale of infrastructure problems threatens to overwhelm a significant number of councils. This applies particularly to rural-remote councils that have to maintain extensive networks of roads and bridges that serve very few ratepayers; and to north coast councils having to cope with varying combinations of retiree-driven growth, dispersed populations, difficult terrain, frequent flooding and extensive floodplains, numerous old timber bridges, coastal erosion and the demands of tourism.

Funding Issues

As indicated in section 4, TCorp advises that in future rates will need to increase to address both annual growth in expenditure and underlying costs, including bringing operating budgets into surplus. But in a number of cases the problems and sums of money involved are such that additional external assistance will also be required.

The recent introduction of the Local Infrastructure Renewal Scheme, which subsidises council borrowings, is an important step in the right direction. On the evidence now becoming available, it will be required for several years at least.

Another useful step would be to secure changes to the natural disasters recovery arrangements to give councils greater flexibility in determining how

available funds can be spent in restoring damaged infrastructure on a network basis – not simply replacing individual structures at the same standard.

A related option worthy of consideration is the South Australian model of setting aside a proportion (in their case 15%) of the roads component of FAGs for 'strategic projects'. In NSW, 15% would amount to around \$30 million per annum. This might be augmented by a State contribution, and a similar percentage of federal 'Roads to Recovery' funds, thus creating a substantial program to assist those councils with the most severe problems, as well as to undertake strategic developmental projects. The program could be administered through Regional Roads Groups (see below).

The Panel proposes to investigate this option in more detail. Inevitably it involves some redistribution of grant funds away from those councils with a strong revenue base that could be more self-sufficient. But as already explained, the Panel sees no alternative. However, the Panel also sees a need for mandatory financial reviews of those councils seeking special assistance. As noted earlier, ratepayers elsewhere in the State cannot be expected to underwrite redistribution of grant funding without assurances that the beneficiaries are doing everything reasonably possible to improve their situation. A team of financial and

7. Tackle the Infrastructure Backlog

asset management advisers could be assembled that would work with managers and councillors to devise appropriate medium-long term strategies. These might comprise a mix of reviews of infrastructure service levels, cuts to other services to channel additional funds into asset management, rate increases and borrowings.

Collaboration and technical assistance

As part of such a program, there needs to be closer collaboration amongst councils and between State and local government in road network planning and funding of key projects. In Queensland, this has been achieved through the establishment of Regional Roads Groups under a formal agreement between the State department and the local government association. A similar model should be considered in NSW, based on the proposed new County Councils. It could be expanded to include new forms of shared strategic procurement of infrastructure works, such as groups of councils jointly commissioning multiple bridge replacement projects. Experience suggests cost savings of 10-20% could be achieved.

A related step would be to provide technical assistance to all councils in the areas of setting realistic condition standards and service levels for infrastructure, including undertaking community engagement to determine what is acceptable. It needs to be more widely understood that at any given time a significant percentage of a council's infrastructure assets will be at a less than desirable standard: it is simply financially impossible to aim for every road, bridge, drain, building etc to be 'satisfactory' or better.

Some councils have already done excellent work in this regard. Also, the Institute of Public Works Engineering and the Australian Centre of Excellence for Local Government are preparing a 'practice note' which should provide a sound basis for training programs.



Preferred Options for Consultation

- Maintain the Local Infrastructure Renewal Scheme (LIRS) for at least 5 years, with a focus on councils facing the most severe infrastructure problems
- Pool a proportion of funds from the roads component of federal Financial Assistance Grants and the 'Roads to Recovery' program to establish a Strategic Projects Fund for roads and bridges
- Investigate the Queensland model of Regional Roads Groups, as well as options to achieve infrastructure cost savings through strategic procurement initiatives
- Introduce mandatory asset and financial management reviews of councils seeking special assistance
- Expand training in asset management and associated financial planning for councillors and staff.

8. Promote Innovation, Productivity and Competitiveness

In *Case for Sustainable Change* the Panel discussed the need for action on various fronts to improve the efficiency, productivity and competitiveness of NSW local government. This section and section 9 recap and expand on some of the issues involved.

Innovation and best practice

One of the advantages of the decentralised nature of local government is the large number of different organisations and places at which innovation can occur. Many councils have a good record in this regard. Efforts have been made to capture and disseminate innovation and best practice through various awards programs, the activities of some professional institutes, and more recently the ACELG Innovation and Knowledge Exchange Network.

The *Destination 2036* Action Plan includes a section on the need to encourage and facilitate innovation, but does not make clear how that will be carried forward in an integrated way. Whilst the Division of Local Government now has a group of staff focused on sector development, there needs to be a more concerted approach driven jointly by the Division, Local Government NSW, professional bodies and unions. This could be progressed initially under the aegis of the Local Government Development Board proposed in section 20.

High quality and efficient service delivery

The lack of systematic data collection and performance monitoring across the sector makes it very difficult to determine whether councils generally are delivering services to a satisfactory standard and in a cost-effective way. Some councils regularly survey their communities and local businesses to establish the level of satisfaction with services, but many do not. Systematic service reviews are implicit in the IPR framework, but there is no specific requirement.

Assessing service quality and efficiency needs to be part of the performance framework discussed in the next section. In addition, the Panel sees a need to require regular service reviews by amending the IPR guidelines accordingly – reviews could form part of Delivery Programs. A useful starting point could be the ‘Best Value’ methodology previously applied in Victoria under the 1999 *Local Government (Best Value Principles) Act*. These are summarised in Box 7.

Box 7: Victoria’s Best Value Principles

- All services provided by a council must meet quality and cost standards developed by the council in relation to defined performance outcomes for each service
- All services provided by a council must be responsive to the needs of its community
- Each service provided by a council must be accessible to those members of the community for whom the service is intended
- A council must achieve continuous improvement in the provision of services for its community
- A council must develop a program of regular consultation with its community in relation to the services it provides
- A council must report regularly to its community on its achievements to these principles

The Victorian principles highlight the importance of community consultation in planning and reviewing services; the need to demonstrate continuous improvement and that local government service delivery is equivalent to ‘best on offer’; value for money; and the benefits of shared services arrangements and other partnerships. They also link local government service delivery to local employment opportunities. These should all be fundamental to new requirements for service reviews in NSW.

Workforce and leadership skills

An important and innovative element of IPR is the requirement for councils to prepare 4-year workforce strategies. Skills shortages are of growing concern and in a highly competitive labour market local government needs to give a high priority to developing the talents of its workforce and finding new ways to attract and retain skilled personnel. This issue is addressed in the National Local Government Workforce Strategy prepared by ACELG and LGMA. A number of relevant actions are also being explored through the *Destination 2036* process.

A critical factor in this regard is the quality of management: do managers have not only the technical and professional skills they require, but also the ability to be effective leaders of the workforce? Inspirational leadership can make a major contribution to attracting and retaining other staff, but current initiatives in leadership development in NSW are limited and patchy.

A useful next step would be for the parties concerned to jointly prepare a specific NSW Local Government Workforce Strategy to apply the principles and ideas set out in the forthcoming national strategy, together with those that emerge from the *Destination 2036* actions.

Industrial relations

A number of submissions to the Panel have suggested that the current Local Government Award lacks flexibility, focuses on skills at the expense of other attributes of staff, and builds in excessive labour costs for some activities, especially where 'out-of-hours' work is involved. Unions contest these views.

The Panel can understand why in a very tight fiscal environment some local government leaders – senior managers and elected members – are looking for every available option to cut costs. In that context, changing some features of the award, terminating existing over-award conditions and outsourcing or creating new entities outside the award's coverage may seem to be attractive courses of action. However, the Panel is not convinced that the award is as costly and inflexible as some believe, and that further efficiency and productivity gains cannot be made through negotiation. There may be scope, for example, to balance a commitment to retain jobs in award-based entities (such as the new County Councils proposed in section 2) with some relaxation of specific award provisions, such as spread of hours, that may substantially increase costs of operating 'out-of-hours' services. There may also be scope for some increased flexibility to address specific skills shortages. The award needs to continue to evolve with the changing circumstances of councils and their employees, and the needs of communities.

The Panel would welcome further detailed submissions on these issues during the next two months, and will seek further advice from both Local Government NSW and the unions.

Preferred Options for Consultation

- A new sector-wide program to promote, capture and disseminate innovation and best practice
- Amend the IPR Guidelines to introduce a requirement for regular service reviews based on 'best value' principles
- Prepare a NSW Local Government Workforce Strategy
- Explore areas in which the Local Government Award can continue to evolve to support an efficient and productive sector able to address future challenges.

9. Advance Improvement and Accountability

Much of NSW local government exhibits a strong culture of compliance: have the required processes been completed and the right boxes ticked, rather than, has something valuable been achieved? Even a potentially exciting innovation such as the preparation of Community Strategic Plans can be seen as just another hurdle to be jumped. This culture reflects a number of factors, notably progressively increasing demands imposed over the years by the many State agencies that assist or regulate local government, as well as the limited capacity of many smaller councils – compliance takes precedence over excellence and innovation.

At the other end of the spectrum, relatively little emphasis has been placed on fostering continuous improvement and effective accountability to local communities. Some useful steps have been taken, such as the incorporation of performance indicators and an ‘end-of-term’ report in the IPR framework, and the DLG’s Promoting Better Practice program (although it too tends to emphasise compliance as much as improvement). However, a continued lack of consistent data collection and benchmarking across local government makes it very difficult for councillors, managers, communities and other stakeholders to gain a clear understanding of how a council is performing relative to its peers.

More needs to be done to bring about a change of culture from compliance to improvement, and to

ensure that councils are truly accountable for their performance. Compliance tasks should be reduced wherever possible, and councils given greater flexibility to manage their affairs according to local needs.

Data and benchmarking

In 2012 the NSW Auditor General reported on some major deficiencies in the availability and use of data in respect of local government. He observed among other things that:

- The Local Government Act requires councils to provide information but does not require DLG to review or act on most of the information it receives
- The Act does not require councils to provide adequate information on their performance, including whether services are delivered efficiently and effectively
- DLG does not provide the public with analysis about the performance of individual councils or the sector as a whole, and in this respect, NSW councils are subject to less public scrutiny than councils in some other jurisdictions.
- Current arrangements may not provide timely warning of performance issues.

Similar findings by the Victorian Auditor General have led to a major initiative to develop consistent state-wide data collection and performance indicators. This program includes:

- A focus on accountability to residents and ratepayers
- Use of the data and indicators to prepare an annual sector report
- Streamlining other forms of reporting by councils across all government agencies in order to offset the workload involved in the new system
- Best practice guidance on linking strategic planning and performance reporting.

The Panel considers the Victorian approach well worth following. In NSW terms, it would represent a logical further development of the IPR framework. The Panel notes that DLG is exchanging information with its Victorian counterpart, and that the *Destination 2036* Action Plan includes an initiative for DLG to ‘Develop a consistent performance measurement approach for councils and a comprehensive program to support improvement.’ A decision has already been taken to replace the previous annual publication of ‘comparative information’, which had significant limitations as regards the value and quality of the information provided.

Reducing ‘Red Tape’

The Panel sees great merit in the Victorian move to reduce the overall compliance and reporting burden on councils. Consideration should be given to engaging IPART to undertake a similar whole-of-government review of the way agencies regulate NSW local government, and to identify opportunities to streamline processes and dispense with unnecessary or excessive regulation. This would build on its recent review of the way local government handles its own regulatory roles.

Internal and performance auditing

At present there is no requirement for councils to establish audit committees or to put in place effective internal audit processes, although the DLG has strongly encouraged such action. There is evident resistance from the sector, especially smaller councils, given the costs and time involved. However, without rigorous internal and performance auditing – linked to the improved arrangements for financial audit proposed in section 5 – a new agenda of improvement and accountability would be compromised.

At present, only about half of NSW councils have an audit committee and/or some form of internal audit process, and the latter tend to focus primarily on compliance, risk and fraud control. Some audit committees include external, independent members and have an independent chair, but many are strongly embedded within the council and answerable primarily to the General Manager. This can generate conflicts of interest.

The Panel believes a number of steps need to be taken, as set out in Box 8.

Box 8: Options to Strengthen Internal and Performance Auditing

- Re-orient the concept of internal audit more towards adding value and improvement
- Require all councils to have an ‘audit, risk and improvement’ committee and associated internal audit function with broad terms of reference covering financial management, good governance, performance in implementing the Community Strategic Plan and Delivery Program, collection of required indicator data, continuous improvement and long term sustainability
- Require a majority of independent members and an independent chair, and preclude General Managers from membership of audit committees (but not attendance at meetings)
- Ensure that the chair of the audit committee reports at least biannually to a council meeting on the organisation’s performance in financial management, corporate risk, good governance and continuous improvement
- Examine the possibility of joint audit committees and internal audit processes for smaller councils, perhaps arranged through the new County Councils
- Engage the Auditor General to conduct issue-based performance audits in key areas of local government activity.

Issue-based performance audits by the Auditor General would inform and support internal auditing. Such audits have been conducted by the Victorian Auditor General for many years. Topics are selected in consultation with the sector, and recent audits have covered important issues such as rating practices, sustainability of small councils, business planning, fees and charges, use of development contributions. They usually involve a small sample of representative councils. The audits do not question the merits of councils’ policy objectives. Rather, their role is to assess whether councils are authorities achieving their objectives and operating economically, efficiently and effectively.

Having the Auditor General conduct such audits offers both an independent view of the sector’s performance, and the opportunity to compare the performance of councils with that of State agencies engaged in similar area of activity.

Improving auditing along the lines proposed offers an alternative to prescription and compliance as a means of demonstrating that councils are ‘doing the right thing’. As such, it should be seen as a means of enhancing local government’s reputation and strengthening its position as a respected partner of the State.

An Annual General Meeting?

The Tasmanian Local Government Act contains a provision under which councils must hold an Annual General Meeting. The requirement is not spelled out in detail, but the concept is an interesting one. A council AGM held in October-November each year would provide an opportunity for:

- Tabling of the audited accounts and questioning of the auditor by councillors, and perhaps the public (the former is already a requirement)
- A public presentation by the chair of the audit committee
- A 'state of the area' address by the mayor, outlining the council's achievements relative to the Community Strategic Plan and Delivery Program and key issues that need to be addressed.

Such an annual event could focus public and media attention on the council's performance, and thereby considerably enhance accountability – as well as providing an opportunity for the council to report its achievements.

Preferred Options for Consultation

- Development of consistent data collection and performance measurement systems for NSW councils along similar lines to the current Victorian initiative, and in accordance with the Destination 2036 Action Plan
- A review by IPART of the regulatory and compliance burden imposed by State agencies on NSW local government
- Strengthening of internal and performance audit processes as proposed in Box 8
- Further consideration of the concept of a council Annual General Meeting.

10. Improve Political Leadership

The role and quality of political leadership is receiving increased attention worldwide, linked to a perception that governments are performing poorly and failing to address people's needs. The Panel has received many comments that identify failings in governance: poor conduct in council meetings, questionable decision-making processes, lack of community consultation and so on. These issues are addressed in this and the following two sections.

Role of councillors

The respective roles of mayors and councillors are stipulated to varying degrees of detail in sections 226 and 232 of the Local Government Act. Under section 232 the role of a councillor is divided into two parts: as a 'member of the governing body' and as an 'elected person'. The former is seen as deliberative – planning, resource allocation, policy development and performance monitoring. These functions give rise to the concept of councillors forming and behaving as a 'board of directors'. The role of the councillor as an elected person is described in terms of community representation, leadership and communication. This is more clearly 'political' and includes those functions that most councillors would regard as fundamental to being re-elected.

The wording of the Act reveals evident tensions in the councillor's role. These are exacerbated by the fact that councils must meet and make decisions in public, and do not have a select group of councillors who act as a 'cabinet'. In Australia, only Brisbane City Council

uses that model (the 'civic cabinet' comprises the Lord Mayor and chairs of major committees).

Resolving these tensions is no simple matter. One option might be to have a mix of ward councillors with a primarily representative function, and others elected 'at large' who might have greater freedom to take a more strategic view. The City of Adelaide has this model. In some cases, the 'at large' councillors could take on 'portfolio' responsibilities and form a 'civic cabinet' alongside the mayor. These might be full-time positions. Another option – suitable only for very large councils – is for the council itself to be wholly elected 'at large', but also to establish Local Boards to deal with community-level issues (discussed in section 3).

Councillor skills

Today's councillors require enhanced skills to deal with the complex challenges they face. This raises the thorny question of whether ongoing professional development should become mandatory. Those who argue this change claim that councillors learn best 'on the job' and that there are no such demands on state and federal politicians. Counter arguments are that knowledge and skills can be acquired with greater certainty if 'work experience' is complemented by formal training; and that unlike nearly all MPs, councillors become frontline decision-makers as soon as they are elected.

The Panel is convinced that mandatory, ongoing professional development is required. It notes that

Local Government NSW is currently exploring possible accredited programs, so that councillors have the option of counting professional development towards higher qualifications. NSW should adopt the South Australian approach of requiring councils to prepare a coherent councillor development program and to fund it appropriately. Programs need to include a mix of in-house and external sessions so that councillors from different areas meet and learn together.

A related issue is the provision of administrative and technical support to councillors. In most councils this is minimal. Councillors cannot be expected to play a strong role in policy development and to effectively monitor the organisation's performance unless they are given adequate support. It should be a responsibility of the Mayor and General Manager to ensure such assistance is provided as a matter of course.

Ensuring broadly-based representation

A number of concerns have been raised with the Panel regarding the adequacy of local government as representative democracy. These include:

- Increasingly high ratios of population to councillors in some very large and rapidly growing councils e.g. over 20,000:1 in Blacktown
- Similarly, lack of a ward system in some large and/or diverse council areas
- The low numbers of women and younger people elected as councillors
- The limited cultural diversity of many councils, including low Indigenous representation.

Over recent years the ‘board of directors’ concept has led to reduced numbers of councillors in many local government areas. Amalgamations have also had that effect. There has also been a tendency to switch from wards to ‘at large’ elections. The Panel has been unable to identify any definitive evidence regarding the pros and cons of these trends: they require further investigation.

Attracting more women, young people and people from diverse cultural backgrounds to stand as councillors has been an elusive goal. Factors involved include the sheer amount of time involved, costs of child care or home help, the number and timing of meetings, and the culture of councils (are they welcoming to new and ‘different’ councillors?). There are also broader issues around levels of civic awareness. Again, further investigation is required.

A related issue concerns whether councillors and mayors should be limited to, say, 3 terms in order to ensure turnover and introduction of ‘fresh faces’ and new ideas. The Panel favours such an approach, subject to more detailed consideration of all the factors involved.

Attracting ‘quality’ candidates

There is a general view that local government needs to attract a wider range of ‘quality’ candidates to stand as councillors. Options include:

- Civic awareness programs to publicise the role of local government, its importance and value to the community, and how it works
- Improving the reputation of local government through better performance
- Providing more support to councillors, addressing the constraints mentioned above and using new technologies to cut back on face-to-face meetings
- Increased remuneration.

As a corollary, it is also important to ensure that all candidates understand the responsibilities and pressures they will face as a councillor and are ready to make the effort required to do the job properly. Submissions to the Panel suggest that there are still many ‘single issue’ candidates who have little grasp of the broader role they will be required to play; and that ‘above the line’ voting can lead to the election of candidates who stood only to ‘make up the numbers’ on a group list. It may be helpful to require all would-be candidates to attend pre-election awareness sessions *before* nominations close at which the role of, and demands on, councillors are explained fully.

Councillor remuneration

The need for improved councillor remuneration is raised regularly by local government representatives. The Panel has yet to arrive at a firm conclusion, but is concerned that recent decisions of the Remuneration Tribunal appear to under-state and under-value the role that councillors play. There is a need to shift from a ‘volunteer mentality’ to one of professionalism. In addition, the Panel’s proposals for County Councils, Local Boards and amalgamations will necessitate adjustments to the current classification system. This needs to be addressed, along with the following issues:

- The Panel’s proposed changes to the role of mayors, and whether mayors of larger councils should be full time
- Whether very large councils should also have some full-time ‘portfolio’ councillors as suggested above
- Whether mandatory professional development should be linked to increased remuneration and, if so, whether there should be some assessment of additional knowledge and competencies gained
- What remuneration should be paid to members of proposed Local Boards.

Code of Conduct matters

Concerns have been expressed that the new Code of Conduct is very detailed and may be difficult to administer in practice. The Panel has not formed a view on the Code as such, but supports efforts to ensure that local government's reputation is not tarnished by unseemly behaviour and poor governance. Thus the Panel endorses current moves to amend the Local Government Act to enable early and staged intervention in those cases where good governance is being compromised. Local Government NSW also has an important role to play in this context: poor governance in particular councils damages the sector as a whole, and the association ought to have the authority and capacity to step in where necessary (see section 19).



Preferred Options for Consultation

- Amendment of the Local Government Act to clarify the different elements of the role of councillors
- Amendment of the Local Government Act to provide additional governance options for larger councils, including a mix of ward and 'at large' councillors and a 'civic cabinet' model
- Mandatory, ongoing professional development for councillors, linked to a requirement for each council to adopt and fund a councillor development program
- A requirement for Mayors and General Managers to ensure that all councillors have access to adequate administrative and policy support
- Establishment of a joint working party on council governance with the Division of Local Government, Local Government NSW, Local Government Managers Australia and the Local Government Acts Task Force to consider other matters raised in this section, and to provide advice to the Panel for its final report.

11. Enhance the Status of Mayors

Potential enhancement of the role and status of mayors was discussed at some length in *Case for Sustainable Change*. This section presents the Panel’s latest thinking, but a number of aspects require further investigation and discussion.

An expanded role

Both internationally and in some other states increasing emphasis is being placed on the mayor as both a political and civic leader. This reflects the perceived need for stronger and more effective leadership mentioned in the previous section. In our region the trend has been highlighted by recent changes to local government Acts in Queensland and New Zealand, as well as the way the role of the mayor of the new Auckland ‘super city’ has been defined. Emerging features of the role of mayors include:

- Playing a leading role in community engagement, formulating a vision for the area, strategic planning and policy development
- Close involvement in preparation of the budget
- Leading the councillors and ensuring good governance
- Forging partnerships with government agencies, other service providers, business and community groups
- Providing advice and strategic direction to the CEO (General Manager).

Concern has been expressed that this is a trend towards US-style executive mayors and that the current ‘separation of powers’ between the body politic and management will be compromised. Certainly any strengthening of the role of mayors could constrain to some extent the freedom to manoeuvre of General Managers, but on the other hand it is generally agreed that in any event the current system depends heavily on a close and effective Mayor-General Manager relationship. There is a very significant difference between giving a mayor increased authority with well-defined responsibilities, and making the mayor chief executive. This can be made clear in the Act, which at present offers very little guidance on the role mayors should play.

The Panel has reviewed a great deal of evidence on these issues. It has concluded that enhancing the role of mayors could make a major contribution to focusing councils on strategic issues, improving governance and strengthening inter-government relations and partnerships with key stakeholders. Suggested principal functions of mayors are set out in Box 9. These are all based on established practice elsewhere. Mayors of major regional centres would have an additional leadership role (see section 14).

Box 9: Suggested Principal Functions of Mayors

- Principal member of the council – guide council business; speak on the council’s behalf
- Community leadership – promote a vision for the area; ensure engagement with the community; exercise civic leadership
- Political governance – propose the committee structure; oversee the councillors in the exercise of their functions and powers
- Strategic planning – lead the development and implementation of council plans, policies, and budgets; oversee and present the budget
- Guiding the General Manager – lead, manage, and provide advice and strategic direction to the General Manager in accordance with council policies; collaborate with the General Manager in areas of shared responsibility
- External relations – lead the development and maintenance of working partnerships with government agencies and other key stakeholders; represent the council on regional bodies and in inter-government forums.

Responsibility and remuneration

With additional authority must go increased responsibility and greater accountability. The mayor should be expected to have a thorough grasp of strategic and financial issues, and to take responsibility along with the General Manager for certifying that key documents such as the Community Strategic Plan, Delivery Program and annual statements of accounts have been properly prepared. He or she should be able to present the budget to the council and community and defend the assumptions on which it is based.

To fulfil these responsibilities mayors will need additional knowledge and skills. Specialised professional development over and above that required for councillors should be mandatory, and should be undertaken within 3 months of election as mayor.

In larger councils (certainly where populations exceed 30-50,000 and in major regional centres as defined in section 14) the expanded mayoral role will amount to a full-time, senior position. Mayors should be remunerated accordingly.

Election of mayors

The Panel considers that as in Queensland, Tasmania and New Zealand mayors should generally be popularly elected. Under the current optional arrangements, only about a quarter of NSW mayors are directly elected, and elsewhere the mayor has to face re-election by the councillors every year – even in many large urban councils facing complex and demanding strategic issues. Annual elections create unnecessary instability and the risk that councillors will simply ‘take turns’ rather than taking the role seriously.

There have been cases of popularly elected mayors at loggerheads with a council of a different political persuasion. This is a risk and direct election needs to be matched by a shift in the ‘balance of power’ in favour of the mayor, who should enjoy a mandate to do certain things. At the same time, it needs to be recognised that election of the mayor by the councillors can also lead to stalemate or ongoing instability when the mayor has a very narrow majority.

The Panel’s conclusion is that mayors of councils with a population greater than 20,000 should all be popularly elected. Smaller councils should continue to have a choice but the term of the mayor should be at least two years.

Preferred Options for Consultation

- A new legislative framework built around the mayoral roles suggested in Box 9
- The mayor becoming a full-time, well paid position in larger councils
- Mandatory ongoing professional development for mayors, including an initial specialised course to be completed within three months of election
- Popular election of all mayors of councils with a population of 20,000 or more
- Minimum two-year terms for other mayors
- Referral of these options to the joint working party proposed in section 10 for further consideration and advice to the Panel.

12. Revisit Council-Management Relations

The nature of local government requires councillors and senior staff to work closely as a team. The close relationship with the community and the way the decision-making process works means that the line between 'policy' and 'management' is often blurred, and unlike State and federal governments there are no executive ministers to provide a link between the body politic and the administration. That function rests largely on the relationship between the Mayor and the General Manager. There is a need to consider additional checks and balances to improve Council-Mayor-General Manager relations.

Ambiguity and tensions

The 1993 Local Government Act removed the title of 'chief executive officer' from mayors and made General Managers responsible for 'day-to-day' management, and gives them authority to appoint, control and dismiss staff. The Act also makes them 'generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council.' Under the Integrated Planning and Reporting arrangements, the Act requires them: to *assist* (emphasis added) the council in connection with the development and implementation of the community strategic plan and the council's resourcing strategy, delivery program and operational plan....'

Thus, as in the case of the role of councillors, the Act is unclear about just how much authority and autonomy General Managers should exercise. Some adopt a highly consultative approach in dealing with the elected body, whilst others tend to erect barriers between the administration and councillors and seek to 'go it alone' as much as possible. For these and other reasons tensions often escalate, usually leading sooner or later to the General Manager resigning or being dismissed. Regrettably, there has also been a trend towards councillors or mayors being elected on platforms of dismissing the current General Manager. Conversely, there have been cases of General Managers' contracts being renewed without advertising shortly before elections.

These are very complex issues and there are no simple solutions. The Panel wishes to discuss them in more detail with key stakeholders and the Acts Review Task Force. At this stage it offers the following options for further consideration:

- The current concept of the General Manager is fundamentally sound but some provisions of the Act need to be clarified to make it clearer that the General Manager's core role is to advise and assist the council, implement council policies, regularly consult and report to councillors on key policy and implementation issues, and support the mayor
- General Managers should be required to facilitate regular contact between the mayor, councillors and senior managers
- Councils have a legitimate interest in how staff resources are allocated and hence the council should retain its current power to approve the organisation structure on the advice of the General Manager, but the precise extent of its involvement needs to be clarified
- There should be a 'cooling off' period of 6 months after the election of a new council or mayor during which the summary dismissal provisions of the standard General Manager contract should not apply (this would provide an opportunity to build a positive working relationship)
- Use of the summary dismissal provisions at any time should require a two-thirds majority of councillors
- The mayor should lead the appointment and performance reviews of the General Manager, and take responsibility for ensuring due process
- Contracts of General Managers should not be renewed within 6 months of an election except by means of a full merit selection process; otherwise they should not be extended for more than 12 months and only on existing terms and conditions
- After 10 years' service the General Manager's position should be automatically advertised for a full merit selection process.

Mayor-General Manager relationship

As discussed in the previous section, a harmonious and productive relationship between the Mayor and General Manager is essential for the effective functioning of councils. This should be a 'special relationship' that reflects the Panel's ideas on the need to enhance the role of the mayor, and must strike the right balance between political leadership and the need to enable the General Manager to handle day-to-day issues and the task of implementing council policies without undue interference.

The previous section made it clear that the Panel believes the balance needs to be tilted a little towards the prerogatives of the mayor, but this should be done in a way that requires the Mayor and General Manager to work together. This could confer a number of joint responsibilities in the areas of strategic planning and financial management, as mentioned in sections 5 and 6. They could also be given joint responsibility for designing the senior levels of the organisation structure. As well, the Panel considers that the mayor should be involved alongside the General Manager in the selection process for designated senior staff, and in their performance reviews and any dismissal proceedings.

Skills of General Managers

The Panel is also concerned that some General Managers appear to lack the range of knowledge and skills required to fill the role effectively. The position of General Manager is now quite rightly open to a wide range of candidates and there is no longer any stipulated qualification for the role. The Panel does not wish to return to the days of the Town Clerk's Certificate, but all General Managers should be required to undertake ongoing professional development of a high standard that provides the opportunity to upgrade their skills across all facets of their role.

Preferred Options for Consultation

Referral of the options listed above and other matters raised in this section to the joint working party proposed in section 10 for further consideration and advice to the Panel.

13. Build Strong Regions

Stronger regional governance must be a central plank of local government reform. This will support the work of councils and facilitate more efficient and effective State-local relations, especially in strategic planning, economic development, infrastructure provision and service delivery.

County Councils

The Panel commissioned research to explore whether ongoing development of voluntary Regional Organisations of Councils (ROCs) could achieve these objectives. ROCs have played a valuable role in regional advocacy and shared service delivery, but they are rarely strong in both. Moreover, not all councils are members of ROCs, their performance is patchy and they tend to wax and wane.

The Panel has therefore concluded that a more robust, statutory framework is required at the regional level. This can be established by using the existing County Council provisions of the Local Government Act, which allow the structure and functions of a County Council to be tailored to the particular needs and circumstances of the region concerned.

Box 10: Factors in Defining County Councils

- Regional or sub-regional communities of interest reflected in existing arrangements
- Strong socio-economic links identified through the Panel's 'cluster-factor' analysis
- Commercial viability of water utilities (at least 10,000 connections)
- A regional centre with existing or potential strategic capacity to anchor the County Council and assist smaller member councils
- Manageable geographic area and suitable scale for strategic planning
- Alignment where possible with related State and federal functions and agencies.

Map 2 demarcates a set of regions within which 'new-look', multi-purpose County Councils could be established. Factors taken into account are listed in Box 10. However, the Panel recognises that changes may well be required, and is keen to discuss the proposed boundaries with councils and State agencies.

At a minimum, each County Council should have the following set of core functions:

- strategic regional and sub-regional planning
- regional advocacy, inter-government relations and promoting collaboration with State and federal agencies in infrastructure and service provision
- management of, or technical support for, water utilities (except for the Lower Hunter and Illawarra which are served by State-owned corporations)
- road network planning and major projects
- waste and environmental management (including weeds and floodplain management)
- regional economic development
- library services
- 'high level' corporate services.

The new multi-purpose bodies would replace existing special-purpose County Councils. They could establish subsidiaries for some areas of service delivery, and may expand their functions over time, including by taking over functions currently managed by State or federal agencies.

The legislation makes it clear that County Councils are NOT an additional tier of government: rather, their role is to work alongside their member councils as a joint entity to undertake selected functions. However, where small rural-remote councils become Local Boards, the County would assume the responsibilities of the former council and then delegate agreed functions back to the Local Board.

Some minor amendments to the Local Government Act may be required to give effect to the Panel's ideas. For example, the Panel believes that the membership of County Councils should automatically comprise the mayors of member councils and chairs of Local Boards, and that the chairperson should normally be the mayor of the designated regional centre (see below). This dual role would become a full-time position. Similarly, in most cases the General Manager of the regional centre could also fulfil that role for the County, and the regional centre council would house the County Council secretariat and support its operations. The Panel does not wish to create unnecessary new bureaucracies. All these operational issues will be discussed in detail with councils during the Panel's next round of consultations before its recommendations are finalised. The provisions of the Local Government Act relating to County Councils are very flexible and solutions can be tailored to different regional circumstances.

Major regional centres

As indicated, the Panel has designed its system of County Councils around existing or potential major regional centres that could play a leadership role and offer technical support where required to other member councils (see Map 2 and Box 11). Dubbo provides a good example of how this can work through its leadership of the Lower Macquarie Water Alliance. The extent of the technical support role will vary within and

between regions depending on the capacity of member councils: in some regions all the members of the proposed County Council are substantial organisations in their own right.

The Panel has also identified a number of cases where it believes there should be amalgamation of councils around a regional centre (see Map 2 and Table 1). These amalgamations are proposed for one or more of three reasons:

- to strengthen the capacity and effectiveness of the regional centre and hence the collective capacity of the County Council
- to reflect close functional inter-relationships (eg 'overspill' development, service provision) between a regional centre and adjoining council areas
- as an option for adjoining 'councils at risk'.

Again, these proposed amalgamations will be discussed in detail during the Panel's next round of consultations.

Box 11: Key Attributes of a Regional Centre

Population and economy – it should have a large (normally >20,000), stable or growing population, with a robust economy and projected ongoing growth.

Hierarchy – it should host regionally significant public and private services, infrastructure and facilities that other local government areas rely upon for their continued sustainability.

Accessibility – it needs to be located on major transport routes facilitating easy road access from surrounding areas.

Scale – it needs to be of sufficient size to be 'first amongst equals' in its region; to realise its potential as a partner to State and federal governments; and to attract local, national and international interest and investment.

Strategic capacity – it needs significant resources at its disposal including a strong revenue base; the ability to undertake all its Integrated Planning and Reporting obligations; staff with high level strategic, professional and technical skills; the capacity to undertake high level economic and infrastructure projects.

Leadership and facilitation – it needs to be willing and able to see its role in the context of its region; to commit resources to regional projects on the basis that a strong region is in its long-term interest; to promote and region and its opportunities for growth, including regional advocacy and negotiation with other governments; to negotiate partnerships with neighbouring regions and councils; and to gain acceptance as a regional leader that can be trusted.

Good governance – it needs councillors who understand their role and regional obligations, and can make decisions for the region; an electoral system that encourages a field of high quality candidates who can advocate on behalf of diverse interests within the region; structures and models that support regional decision-making, regional service delivery and the sharing of resources; and to build social capital in the region through an engaged community.

Water utilities

The Panel was specifically asked to consider the Armstrong-Gellatly and Infrastructure NSW recommendation to consolidate the existing 105 local government water utilities into around 30 regional groupings. The State government has adopted those recommendations in principle.

The latest report by the NSW Office of Water shows that overwhelmingly local government water utilities are performing very well. Accordingly, the Panel sees no case for major changes in the way they are being managed unless the councils concerned identify a need to make adjustments. In particular, the Panel believes that local government should retain its current responsibilities for water supply and sewerage, not only because it is delivering those services efficiently and effectively, but also because those services give rural local government critical financial mass and the capacity to recruit and retain professional staff.

Nevertheless, the Panel sees merit in enhanced regional collaboration to facilitate strategic business planning, to provide high-level technical support to smaller councils, and – where agreed – to offer an additional option for infrastructure development and service delivery. Making water utilities a function of the new multi-purpose County

Councils achieves those objectives whilst keeping rural water supply and sewerage assets and operations firmly under local government ownership and control.

North coast councils

Along the NSW coast between the Hunter and the Tweed there are eight large or very large councils – all forecast to grow substantially – that TCorp allocated a FSR of Weak or Very Weak, and in every case with a Negative Outlook. This is a serious state of affairs. It reflects to varying degrees difficult environmental conditions, scattered populations in rural hinterlands requiring extensive networks of roads and bridges, limited financial capacity, inadequate funding of infrastructure in the past, and continuing growth pressures.

Detailed solutions will vary from council to council, but all require revised medium-long term financial strategies, rigorous fiscal discipline, and likely painful adjustments to revenue and expenditure. Some will need considerable external support, at least in the short term whilst new strategies take effect. Action plans will need to be agreed with the State government, having regard to rate-pegging and other policy and legislative requirements.

In some cases amalgamations may form part of medium-longer term solutions. However,

amalgamations alone will not solve the councils' financial problems, and those need to be addressed first. In the shorter term, the Panel recommends using the proposed County Councils to achieve economies of scale and scope in planning, service delivery, major infrastructure projects and sharing of expertise.

Cross-border issues

Development in the border regions of NSW and around the ACT is driven to a very significant extent by cross-border economic and social links and provision of essential services. A number of councils are more closely integrated with neighbouring parts of Victoria, Queensland, South Australia or the ACT than with adjoining areas of NSW. The importance of these linkages must be recognised and increasingly arrangements for local and regional governance will need to facilitate cross-border collaboration. The Panel will further explore these issues.

Existing County Councils

There are 14 existing special-purpose County Councils. Under the Panel's proposals they would be absorbed into the new multi-purpose entities, but there may have to be one or two exceptions in the case of water utilities. Table 2 indicates the Panel's thinking at this stage.

Preferred Options for Consultation

Establish 'new look' multi-purpose County Councils and carry out amalgamations around major regional centres as shown on Map 2 and in Table 1.

Map 2: Proposed County Councils and Regional Centres

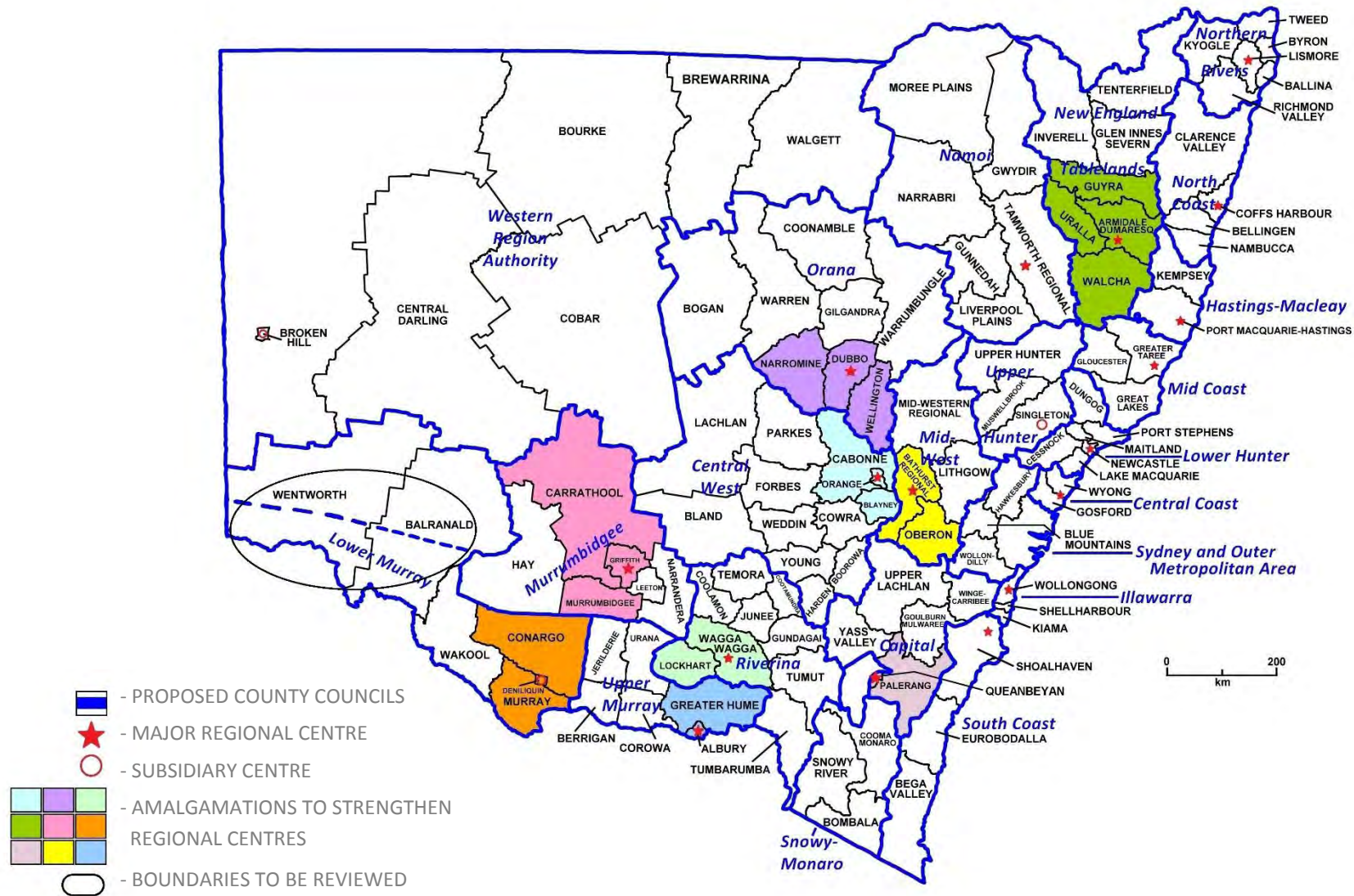


Table 1: Proposed Amalgamations around Major Regional Centres

Regional Centre	Proposed Amalgamation	Comments
Albury	+ Greater Hume	<ul style="list-style-type: none"> Combined 2036 population projected at 66,900 Greater Hume was amalgamated in 2004 and its boundary with Albury adjusted: its long term sustainability is questionable but it could continue as a separate council for some time Greater Hume is currently part of the Riverina County Council
Armidale-Dumaresq	+ Guyra + Uralla + Walcha	<ul style="list-style-type: none"> Combined 2036 population projected at 36,300 Amalgamation has been proposed on several previous occasions and strongly resisted – the evidence from neighbouring Tamworth is that it should proceed and would bring considerable benefits to all Guyra, Uralla and Walcha should all be converted to Local Board status if they remain separate
Bathurst	+ Oberon	<ul style="list-style-type: none"> Combined 2036 population projected at 52,200 Oberon’s long term sustainability is questionable: it could continue as a separate council for some years but amalgamation would provide a much higher capacity base
Deniliquin	+ Conargo + Murray	<ul style="list-style-type: none"> Combined 2036 population projected at 18,300 Conargo should be converted to Local Board status if it remains separate Combining Deniliquin and Murray is essential to produce a regional centre with sufficient capacity Wakool might also be included and would increase projected population to 22,400
Dubbo	+ Narromine + Wellington	<ul style="list-style-type: none"> Combined 2036 population projected at 60,300 The sustainability of both Narromine and Wellington is doubtful in the long term, although both could continue as separate councils for some time Creation of a truly major regional council would bring considerable benefits to all
Griffith	+ Carrathool + Murrumbidgee	<ul style="list-style-type: none"> Combined 2036 population projected at 36,000 Carrathool and Murrumbidgee should both be converted to Local Board status if they remain separate
Orange	+ Blayney + Cabonne	<ul style="list-style-type: none"> Combined 2036 population projected at 65,100 Cabonne looks sustainable into the medium-long term, but its recent and projected growth is overspill from Orange: this appears to be a classic ‘doughnut’ situation Some areas on the northern and western fringes of Cabonne are seeking to move to adjoining councils Blayney’s long term sustainability is questionable: it could continue as a separate council for some years but amalgamation would provide a much higher capacity base Creation of a truly major regional council would bring considerable benefits to all
Queanbeyan	+ Palerang	<ul style="list-style-type: none"> Combined 2036 population projected at 88,100 Palerang was created in 2004 and has been through a difficult establishment period: its financial position remains questionable and projected substantial growth is essentially ACT and Queanbeyan overspill There may be a case to divide Palerang amongst all its adjoining councils, but this would be very disruptive
Wagga	+ Lockhart	<ul style="list-style-type: none"> Combined 2036 population projected at 77,500 Lockhart should be converted to Local Board status if it remains separate

Table 2: Future of Existing County Councils

County Council	Member Councils	Functions	Future Options
Castlereagh-Macquarie	Walgett, Coonamble, Warren, Gilgandra, Warrumbungle	Eradication of Noxious Weeds	Split function between Western Region Authority (Walgett) and new Orana CC (remainder)
Central Murray	Berrigan, Conargo, Murray, Deniliquin	Eradication of Noxious Weeds	Split function between new Upper Murray CC (Berrigan) and new Lower Murray CC (remainder)
Central Tablelands	Blayney, Cabonne, Weddin	Water supply to 5,500 connections	Incorporate into new Central West CC
Far North Coast	Tweed, Byron, Ballina, Lismore City, Richmond Valley and Kyogle	Eradication of Noxious Weeds	Incorporate into new multi-purpose Northern Rivers CC
Goldenfields Water	Bland, Coolamon, Cootamundra, Harden, Junee, Temora, Young, part Narrandera	Bulk water supply to Cootamundra town plus Harden and Young shires; reticulation to remainder (10,600 connections)	Explore following approach: <ul style="list-style-type: none"> ▪ Bulk supply to new Central West CC for Harden and Young ▪ Arrangement with new Central West CC for Bland ▪ Arrangement with new Murrumbidgee CC for Narrandera ▪ Incorporate remainder into new Riverina CC
Hawkesbury River	Hawkesbury, Penrith, Blacktown, Hills	Eradication of Noxious Weeds	Retain
MidCoast Water	Greater Taree, Great Lakes, Gloucester	Water and sewerage services (supply and reticulation) to 40,000 households	Reconstitute as new multi-purpose CC
New England Tablelands	Armidale, Guyra, Walcha, Uralla	Eradication of Noxious Weeds	Incorporate into new New England-Tablelands CC
Richmond River	Lismore City, Ballina Shire, Richmond Valley	Floodplain Management	Incorporate in new multi-purpose Northern Rivers CC
Riverina Water	Wagga, Lockhart, Urana, Greater Hume	Water supply to 25,700 connections, mostly in Wagga	Explore split function between new Riverina CC (Wagga, Lockhart) and new Upper Murray CC (Greater Hume, Urana)
Rous Water	Lismore (excluding Nimbin), Ballina (excluding Wardell), Byron (excluding Mullumbimby), Richmond Valley	Bulk potable water supply	Incorporate in new multi-purpose Northern Rivers CC
Southern Slopes	Boorowa, Harden, Young, Yass Valley	Eradication of Noxious Weeds	Split function between new Capital CC (Yass) and new Central West CC (remainder)
Upper Hunter	Muswellbrook, Upper Hunter, Singleton	Eradication of Noxious Weeds	Reconstitute as new multi-purpose Upper Hunter CC
Upper Macquarie	Bathurst, Lithgow, Oberon, Blayney	Eradication of Noxious Weeds	Split function between new Central West CC (Blayney) and new Mid-West CC (remainder)

14. Reconfigure Rural Councils

As explained in section 4, the Panel has identified 52 small (in population) rural-remote councils that may be considered ‘at risk’ based on the TCorp analysis and other factors. Seven of these are the subject of section 17 on the far western region.

An over-riding consideration for rural councils is the weakness of their own-source revenue base relative to their service delivery and infrastructure responsibilities. In many cases those responsibilities have tended to expand to fill service gaps resulting from the withdrawal of State and federal agencies or a declining private sector. Nevertheless, the weakness exists.

The Panel believes that more can and should be done to channel additional support to rural-remote councils. However, this cannot be in the form of ‘blank cheques’: rural-remote councils, like their urban counterparts, need to show that they are taking all possible steps to address whatever challenges and difficulties they face.

With that in mind, Map 3 and Table 3 set out options for the future of each of the 52 smaller rural ‘councils at risk’. These options include:

- Working as part of a County Council, as outlined in section 13
- Amalgamating with one or more adjoining councils to create a more robust unit
- Accepting the status of a Local Board within a County Council (in those cases where projected populations are very low and an amalgamation is not feasible or appropriate)
- Forming part of the proposed Western Region Authority.

The concept of Local Boards was explained in section 3. The Panel’s view is that populations of less than 5,000 will not normally be sufficient to support a ‘standard’ local government in the medium-long term. Where current or projected populations fall below that level, the status of the council should be re-assessed.

Councils with populations between 5,000 and 10,000 should be kept under review to ensure that they maintain the capacity required to be ‘standard’ local governments – that is, to provide an adequate range of local services and to work effectively within a County Council. However, they could expect to receive technical support from larger and better resourced members of the County Council.

The Panel understands that amalgamations are not always a popular solution and that maintaining local identity is important. However, experience elsewhere indicates that NSW cannot continue to support such a large number of councils with populations less than 10,000, especially where those populations are in decline. To explore the pros and cons of mergers in rural NSW the Panel commissioned a study of a sample of the 2004 forced amalgamations, and has held numerous discussions with other councils created at that time. The overwhelming finding is that, properly planned, mergers can produce stronger, more effective councils, and that community identity can be maintained. Proposals for proper handling of amalgamations are presented in section 20.

Preferred Options for Consultation

Councils discuss the options set out in Table 3 and provide the Panel with a detailed response for consideration in determining its final recommendations.

Map 3: Preferred Options for Rural 'Councils at Risk'

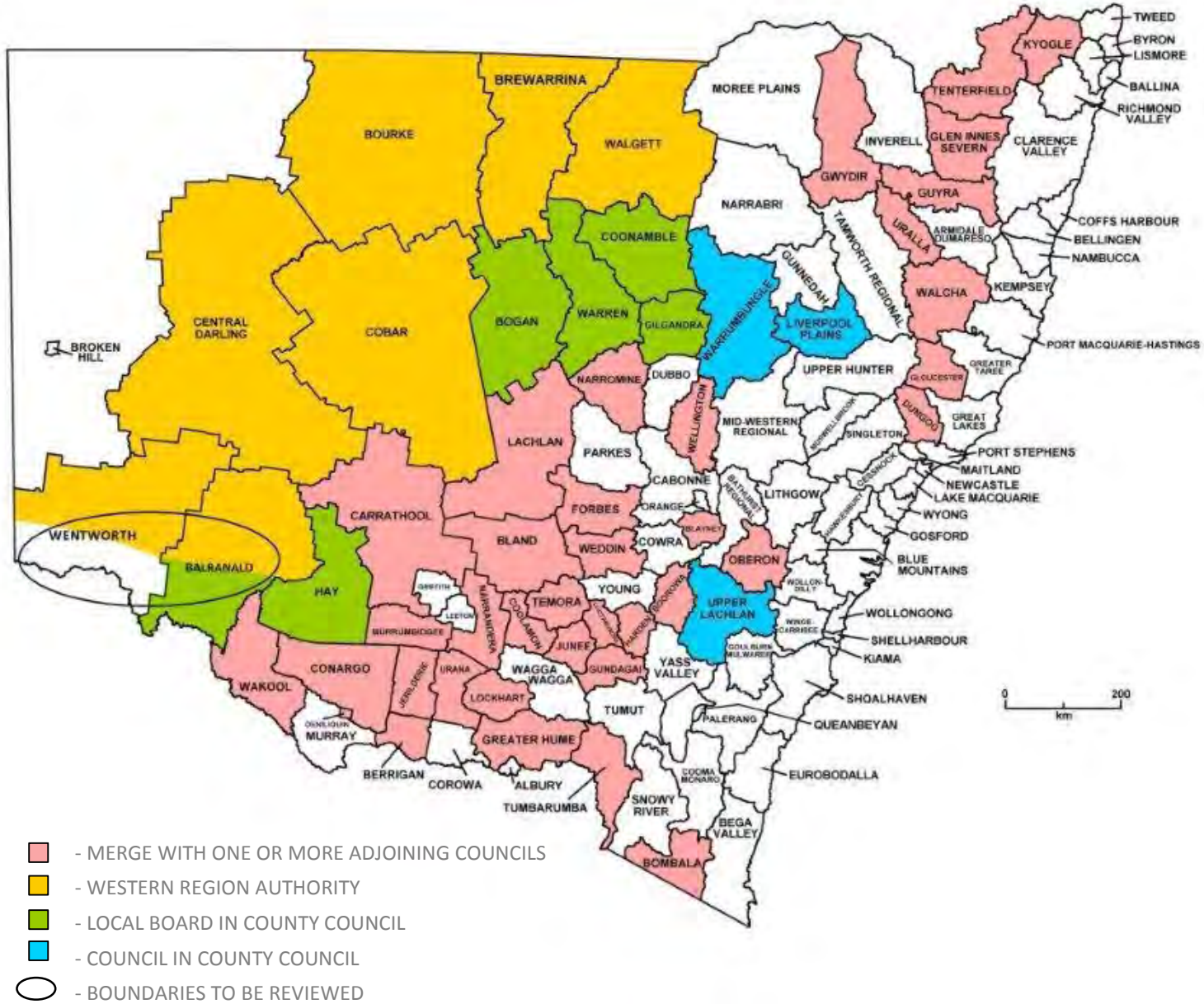


Table 3: Options for Smaller Rural ‘Councils at Risk’

Note: ‘Merger Potential’ based on availability and proximity of a suitable partner (‘ / ’ means and/or). *Indicates significant financial constraints to a merger that need to be addressed in the short term. # Review in 2016 if merger not completed or council has not converted to Local Board status. ^Review in 2020. †Without boundary changes or mergers. ‡As defined in the NIEIR cluster-factor analysis (see references). ‘CC’ means County Council.

Council	Current FSR	FSR Outlook	Population Change 2006-11	Population Change 2011-36	Projected Population 2036	Rate Base	Merger Potential	Options (preferred option in bold)
Balranald#	Weak	Negative	Marginal	Decline	2,200	Low	Low	Part of Western Region Authority and Local Board in Lower Murray CC (see section 17)
Berrigan^	Moderate	Neutral	Marginal	Marginal	8,300	Low	High	Council in Murray CC; merge with Jerilderie/Urana/Corowa
Bland#	Weak	Neutral	Marginal	Decline	5,200		Medium	Council in Central West CC; merge with Forbes/Weddin
Blayney^	Moderate	Negative	Marginal		7,700		High	Council in Central West CC; merge with Orange
Bogan#	Moderate	Neutral	Marginal	Decline	2,000	Low	Medium	Local Board in Orana CC ; merge with Warren
Bombala#	Moderate	Neutral	Marginal	Decline	2,000	Low	High	Local Board in Snowy-Monaro CC; merge with Snowy R/Cooma-M
Boorowa#	Moderate	Negative	Marginal	Decline	2,000	Low	High	Local Board in Central West CC; merge with Harden/Young
Bourke#	Weak	Negative	Marginal	Decline	2,600	Low	Low	Part of Western Region Authority (see section 17)
Brewarrina#	Weak	Negative	Marginal	Decline	1,400	Low	Low	Part of Western Region Authority (see section 17)
Carrathool#	Weak	Neutral	Marginal	Marginal	2,700	Low	Medium	Local Board in Murrumbidgee CC; merge with Griffith
Central Darling#	Very Weak	Negative	Marginal	Decline	1,200	Low	Low	Part of Western Region Authority (see section 17)
Cobar#	Weak	Negative	Marginal	Decline	4,000	Low	Low	Part of Western Region Authority (see section 17)
Conargo#	Sound	Neutral	Marginal	Decline	1,200	Low	High	Local Board in Murray CC; merge with Deniliquin/Murray
Coolamon#	Sound	Negative	Marginal	Marginal	4,400	Low	High	Local Board in Riverina CC; merge with Temora/Junee
Coonamble#	Sound	Negative	Marginal	Decline	2,900	Low	Medium	Local Board in Orana CC ; merge with Gilgandra
Cootamundra^	Moderate	Neutral	Marginal	Decline	6,700	Low	High	Council in Riverina CC; merge with Junee/Temora
Deniliquin^	Moderate	Negative	Marginal	Marginal	7,500	Low	High	Council in Murray CC; merge with Conargo/Murray
Dungog#	Weak	Negative	Marginal		9,900		High*	Council in Lower Hunter CC; merge with Maitland/Cessnock
Forbes^	Moderate	Neutral	Marginal	Decline	8,400		High	Council in Central West CC; merge with Weddin/Bland
Gilgandra#	Weak	Neutral	Marginal	Decline	3,700	Low	Medium	Local Board in Orana CC ; merge with Coonamble
Glen Innes Severn^	Moderate	Neutral	Marginal	Decline	8,000		Medium	Council in New England-North CC; merge with Tenterfield
Gloucester#	Very Weak	Neutral	Marginal	Marginal	5,100		Medium*	Council in Mid Coast CC; merge with Great Lakes/Greater Taree
Greater Hume^	Moderate	Negative	Marginal	Decline	8,600		High	Council in Riverina CC; merge with Albury
Gundagai#	Moderate	Negative	Marginal	Decline	3,400	Low	High	Local Board in Riverina CC; merge with Tumut

Council	Current FSR	FSR Outlook	Population Change 2006-11	Population Change 2011-36	Projected Population 2036	Rate Base	Merger Potential	Options (preferred option in bold)
Guyra#	Moderate	Negative	Marginal	Decline	4,100		High	Local Board in New England-North CC; merge with Armidale Dumaresq
Gwydir#	Very Weak	Neutral	Marginal	Decline	4,500		Medium	Local Board in Namoi CC; merge with Moree Plains
Harden#	Moderate	Negative	Marginal	Decline	3,100	Low	High	Local Board in Central West C; merge with Boorowa/Young
Hay#	Moderate	Negative	Marginal	Decline	2,900	Low	Medium	Local Board in Murrumbidgee CC ; merge with Carrathool
Jerilderie#	Moderate	Negative	Marginal	Decline	1,100	Low	High	Local Board in Murray CC; merge with Berrigan/Urana/Corowa
Junee^	Moderate	Neutral	Marginal	Marginal	5,900	Low	High	Council in Riverina CC; merge with Cootamundra/Wagga Wagga
Kyogle^	Weak	Negative	Marginal	Decline	9,100		Medium*	Council in Northern Rivers CC; merge with Richmond Valley/Lismore
Lachlan#	Moderate	Negative	Marginal	Decline	5,400	Low	Medium	Council in Central West CC; merge with Parkes/Bland
Liverpool Plains^	Weak	Negative	Marginal	Decline	7,100		High	Council in Namoi CC ; merge with Gunnedah
Lockhart#	Sound	Neutral	Marginal	Decline	2,700	Low	High	Local Board in Riverina CC; merge with Wagga Wagga
Murrumbidgee#	Moderate	Neutral	Marginal		3,000	Low	High	Local Board in Murrumbidgee CC; merge with Griffith
Narrandera#	Sound	Negative	Marginal	Decline	5,000	Low	High	Local Board in Murrumbidgee CC; merge with Leeton
Narromine^	Moderate	Neutral	Marginal	Decline	6,000	Low	Medium	Council in Orana CC; merge with Dubbo
Oberon^	Sound	Negative	Marginal	Marginal	5,800		High	Council in Mid-West CC; merge with Bathurst Regional
Temora^	Sound	Neutral	Marginal	Decline	5,500	Low	High	Council in Riverina CC; merge with Coolamon/Junee
Tenterfield^	Weak	Negative	Marginal	Marginal	6,700	Low	Medium	Council in New England-North CC; merge with Glen Innes Severn
Tumbarumba#	Strong	Negative	Marginal	Decline	3,100	Low	High	Local Board in Riverina CC; merge with Tumut
Upper Lachlan^	Sound	Neutral	Marginal	Marginal	7,100		High	Council in Capital Region CC
Uralla^	Weak	Neutral	Marginal	Marginal	5,900	Low	High	Council in New England-North CC; merge with Armidale Dumaresq
Urana#	Weak	Neutral	Marginal	Decline	900	Low	High	Local Board in Murray CC; merge with Corowa/Jerilderie/Berrigan
Wakool#	Weak	Negative	Marginal	Decline	4,100	Low	Medium	Local Board in Murray CC; merge with Murray/Conargo/Deniliquin
Walcha#	Weak	Negative	Marginal	Decline	2,800		High	Local Board in New England-North CC; merge with Armidale Dumaresq
Walgett#	Moderate	Negative	Marginal	Decline	6,000	Low	Low	Part of Western Region Authority (see section 17)
Warren#	Moderate	Neutral	Marginal	Decline	1,900	Low	Medium	Local Board in Orana CC ; merge with Bogan/Coonamble
Warrumbungle^	Weak	Negative	Marginal	Decline	8,100		Medium	Council in Orana CC ; merge with Gilgandra/Coonamble
Weddin#	Moderate	Negative	Marginal	Decline	3,000	Low	High	Local Board in Central West CC; merge with Forbes/Bland
Wellington^	Weak	Neutral		Decline	7,500	Low	Medium	Local Board in Orana CC; merge with Dubbo
Wentworth^	Weak	Negative	Marginal	Marginal	6,900	Low	Low	Create new LGA; remainder part of Western Region Authority (see section 17)

15. Reshape Metropolitan Governance

Since producing *Case for Sustainable Change* the Panel has undertaken considerable further research and consultations concerning metropolitan planning and governance. It has also reviewed the recently released draft Metropolitan Strategy.

The Panel remains of the view that for Sydney to remain Australasia's pre-eminent global city, very substantial changes are needed to the way the region is governed at both local and State levels. This is hardly a novel finding: the need to improve Sydney's governance was emphasised by the Barnett Committee in 1973, which proposed that no metropolitan council should have less than 100,000 people. It has been highlighted in numerous reports since then, notably the recent COAG Reform Council study of 'Capital City' strategic planning.

As the Panel pointed out in *Case for Sustainable Change*, without changes to council boundaries there will be an increasingly severe imbalance in the structures of local government between eastern and western Sydney. This would be inequitable and impede sound strategic planning and effective State-local collaboration. Inner and eastern Sydney would continue to be characterised by a large number of relatively small councils (in both population and area) that to varying degrees lack the capacity to make a truly strategic contribution to metropolitan governance, often struggle to present a united view on behalf of their local

communities, and continue to duplicate services. The result is that local government's role and status in metropolitan affairs is diminished.

These councils argue that amalgamations will destroy local identity and that instead they will strengthen sub-regional collaboration and achieve efficiency and effectiveness through shared services. The Panel is unconvinced. Firstly, as discussed in section 3, there are a number of ways in which local identity and representation can be maintained. Secondly, achievements to date in shared services can at best be described as patchy. Thirdly, modern local government is about much more than service delivery, especially in the metropolitan area where strategic planning, capacity to deliver major infrastructure and improvement projects, and an effective partnership with State and federal agencies are of fundamental importance.

The Panel has therefore concluded that the number of local councils in the Sydney basin should be significantly reduced, especially in the inner and eastern suburbs, on the lower North Shore and around Parramatta and Liverpool. The Panel's objectives are to:

- Create high capacity councils that can better represent and serve their local communities on metropolitan issues, and be true partners of State and federal agencies

- Establish a more equitable pattern of local government across the metropolitan area, taking into account planned development
- Underpin Sydney's status as a global city
- Support implementation of the Metropolitan Strategy.

Options and reasons for boundary changes are set out in Map 4 and Table 4. The options are far-reaching but not as radical as some might prefer. The Panel's view is that on balance, looking ahead to the mid-21st Century when Sydney's population will reach about 7 million, having about 15 councils is appropriate. However, there are valid arguments for a smaller number, and the Panel's proposals leave scope to make further structural changes in the future if required.

Supporting major centres

The Metropolitan Strategy places particular emphasis on the planning and development of a series of major centres. In this regard, the Panel has considered the lessons to be learned from the history of efforts over the past 40 years to establish Parramatta as Sydney's 'second CBD'. One of those lessons is that a strong, well-resourced local council is an essential factor: there is little doubt that Parramatta's development has been hindered by the limited scale and narrow boundaries of the current local government area.

The Panel therefore considers that major centres need to be managed by suitably large and capable councils. This requires:

- A major expansion of the City of Parramatta to include Auburn, Holroyd, most or all of Ryde, and areas of Hornsby and The Hills south of the M2. This will create a city with a broad socio-economic mix and with the resources needed to develop a ‘second CBD’.
- Amalgamation of the local government areas of Liverpool, Fairfield and perhaps Bankstown to support the planned Liverpool ‘regional city’.
- Amalgamation of local government areas on the lower North Shore, in the inner west, and in the St George area. These amalgamations are also needed to reduce excessive fragmentation into small or relatively small units.

The ‘global city’

At the heart of the metropolitan area the Panel sees a need for a greatly expanded City of Sydney that will anchor metropolitan local government and typify ‘global Sydney’. The Panel’s comments about the need to focus on strategic outcomes when considering boundary changes apply particularly to this area. The existing City of Sydney is working well in terms of its current boundaries and role: what the Panel wishes to explore is the concept of a truly ‘global city’. Its preference is for a city of around 780,000 people (by 2036) including seven existing LGAs from Leichhardt and Marrickville east to the coast. The reasoning behind this is detailed in Box 12. In essence, the Panel

believes that Sydney’s future economic growth and international status will rest increasingly on having a central local government that, like Brisbane and Auckland, has the scale and capacity appropriate to global aspirations.

The Panel also sees considerable benefits in sharing the wealth and revenue base of the Sydney CBD across a much wider area. Again like Brisbane and Auckland, the new city would have the capacity to undertake major sub-regional projects, such as light rail and cycleway networks, from its own resources. It may also be able to assume responsibility for some State-managed facilities, such as Centennial Park and the Botanic Gardens, freeing-up funds for allocation to projects in more needy local government areas.

There may well be value in retaining a separate City of Sydney Act to highlight and make provision for special ‘capital city’ features and functions. The Panel will discuss this with the Acts Review Task Force.

Box 12: Key Attributes of a Global Capital City

Physical size – its area should encompass a broad area and cross-section of inner metropolitan suburbs, including iconic locations of global significance.

Hierarchy – its area should include major infrastructure and facilities that are at the peak of the hierarchy for that function (government, transport, health, education, business, recreation, culture etc).

Leadership – it should be the ‘first amongst equals’ of metropolitan councils due to the importance of its decisions, geographic scale, budget and responsibilities, reputation and profile, and relationship to political, business and civic leaders.

Strategic capacity – it should have the ability to manage major regional facilities and to undertake or facilitate major economic and infrastructure development to address the changing needs of the inner metropolitan region.

Global credibility – it needs to be able to be a leader in the Asia Pacific and to maximize opportunities to partner or compete as required with other global capital cities in the race for capital investment and international reputation.

Governability – it should attract the best of candidates for Lord Mayor and councillors, with a broad, diverse and balanced political constituency that will facilitate good governance.

Partnership with the State – it should not be so large as to challenge the primacy of the State, but have the stature, maturity and skills to be a respected partner and to develop productive working relationship with State and federal agencies.

Metropolitan fringe

Three LGAs – Hawkesbury, Blue Mountains and Wollondilly – make up the western fringe of Sydney. Each is responsible for a mix of growing urban centres and rural or natural areas (including water catchments) that provide important ‘green spaces’ around the metropolitan complex.

At this stage there appears to be merit in retaining these councils in more or less their current form to play specialist roles in managing the important areas under their control. However, a number of significant issues need to be addressed:

- The TCorp sustainability assessments gave Blue Mountains and Wollondilly a Weak-Neutral rating, indicating a need for urgent action to address financial concerns and infrastructure funding.
- Hawkesbury and Wollondilly could be subject to boundary adjustments to facilitate sound planning of metropolitan growth.
- Boundary adjustments could result in those two LGAs having quite small populations by metropolitan standards, and there may be a case to consider amalgamations with neighbouring councils in the medium term (options are set out in Table 4).

Sub-regional arrangements

If there is little or no restructuring of existing boundaries, then as in the rest of NSW multi-purpose (but in this case sub-regional) County Councils should be established to undertake a wide range of functions on behalf of their members, thus

ensuring effective and ongoing collaboration in shared services, strategic planning and advocacy, as well as a basis for partnership with State and federal agencies.

If restructuring takes place as preferred by the Panel, sub-regional groupings of councils should be set up for joint strategic planning and implementation with State agencies of proposed Delivery Plans under the Metropolitan Strategy, as well as Regional Action Plans under the State Plan. Sub-regional boundaries have been indicated in the draft Metropolitan Strategy, but may require adjustments in light of the Panel’s proposals.

Transitional Local Boards

Amalgamated councils should have the option of establishing Local Boards, as described in section 3. This would help smooth the transition to much larger local government areas and enable ongoing representation of local communities of interest.

A metropolitan Council of Mayors

With many fewer councils, there would be an opportunity – as well as a strong case – to establish a metropolitan-wide organisation similar to the South East Queensland Council of Mayors. Such a body would provide a ‘voice’ for Sydney, and could represent local government and local communities in high-level consultations with State and federal governments, as well as internationally. It would logically be chaired by the Lord Mayor of the expanded City of Sydney.

Complementary action by the State government

Achieving more effective metropolitan governance also requires a new approach by the State government. Again, this has been spelled out in numerous reports over the years. At a minimum there needs to be much stronger coordination focused on metropolitan planning and major projects, with a clear locus of responsibility (perhaps the Premier’s department); full alignment of the State Plan and Metropolitan Strategy (including through sub-regional plans); and robust arrangements for a much closer working relationship with councils.

Preferred Options for Consultation

Councils discuss the options set out in Map 4 and Table 4 and provide the Panel with a detailed response for consideration in determining its final recommendations.

Map 4: Sydney Metropolitan Options

- Bankstown Options**
- No change
 - Merge with Canterbury
 - Merge with Liverpool/Fairfield

- Liverpool/Camden Options**
- Possible transfer to Camden to facilitate South West growth centre

- | | |
|-----------------|----------------|
| 1. Manly | 10. Ashfield |
| 2. Willoughby | 11. Sydney |
| 3. Lane Cove | 12. Woollahra |
| 4. Hunters Hill | 13. Waverley |
| 5. North Sydney | 14. Randwick |
| 6. Mosman | 15. Botany Bay |
| 7. Canada Bay | 16. Rockdale |
| 8. Strathfield | |
| 9. Burwood | |

- Leichhardt Options**
- Merge with proposed Sydney group or proposed Inner West group

- Marrickville Options**
- Merge with proposed Sydney group or Inner West group or Canterbury

- Canterbury Options**
- Merge with Bankstown or Marrickville or proposed St George group
 - Split between Bankstown and Inner West group

	- PREFERRED 'CORE' GROUPINGS
	- VARIOUS OPTIONS TO BE REVIEWED
	- BOUNDARIES TO BE REVIEWED

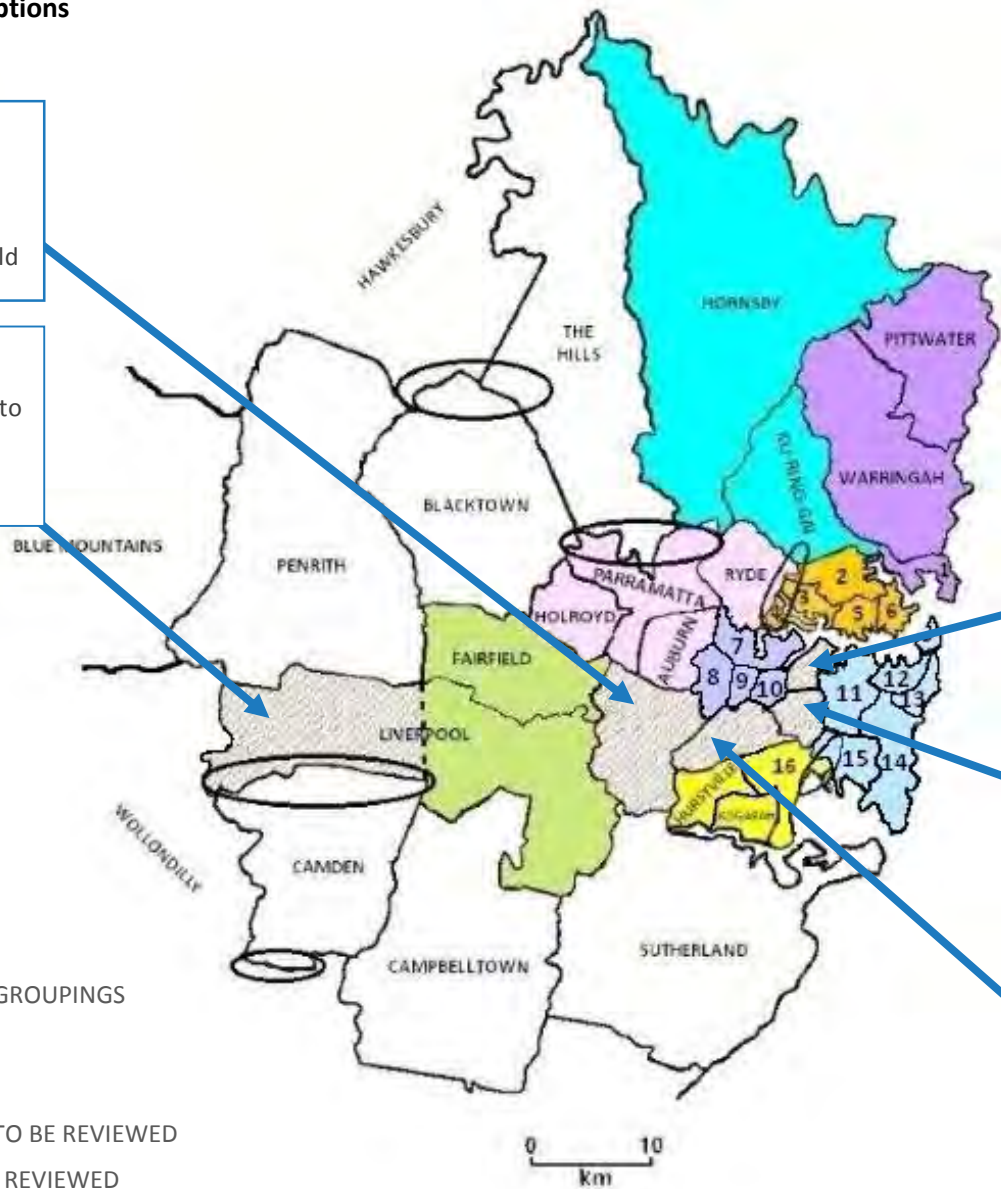


Table 4: Boundary Options for Metropolitan Councils

Council/s	Options (preferred option in bold)	Comments
Ashfield, Burwood, Canada Bay, Strathfield	<ul style="list-style-type: none"> ▪ Amalgamate or ▪ Combine as strong County Council 	<ul style="list-style-type: none"> ▪ Projected 2036 population 263,000 ▪ Close functional interaction and economic/social links between these councils ▪ Need for unified local government to plan and manage Parramatta Road, inner west redevelopment and proposed major centre at Burwood ▪ 3 of these councils will have fewer than 60,000 people in 2036
Auburn, Holroyd, Parramatta, Ryde	<ul style="list-style-type: none"> ▪ Amalgamate (eastern third of Ryde might be included with North Shore group) or ▪ Combine as strong County Council and ▪ Move northern boundary of Parramatta and western Ryde to M2 	<ul style="list-style-type: none"> ▪ Projected 2036 population 610,000, including the whole of Ryde and without boundary adjustments ▪ Close functional interaction and economic/social links between these councils ▪ Need for stronger unified local government to develop Parramatta as second CBD ▪ Parramatta's northern boundary is very close to CBD; relocation to M2 would facilitate planning and improve socio-economic mix ▪ Incorporation of Ryde would strengthen western end of 'Global Sydney Corridor' and improve socio-economic mix
Botany Bay, Randwick, Sydney, Waverley, Woollahra	<ul style="list-style-type: none"> ▪ Amalgamate or ▪ Combine as strong County Council and ▪ Preferably also include Leichhardt and Marrickville 	<ul style="list-style-type: none"> ▪ Projected 2036 population 632,000; 780,000 with Leichhardt and Marrickville ▪ Close functional interaction and economic/social links between these councils ▪ Need for a 'super city' to anchor Sydney's ongoing development as Australia's premier global city (cf Brisbane, Auckland) ▪ Scope to bring together Sydney's international icons and key infrastructure under a single council, and to spread the benefits of the rating base of Sydney CBD
Fairfield, Liverpool	<ul style="list-style-type: none"> ▪ Amalgamate or ▪ Combine as strong County Council and ▪ Consider including Bankstown and transfer of western part of Liverpool to Camden 	<ul style="list-style-type: none"> ▪ Projected 2036 population 602,000, but could increase to around 750-850,000 depending on possible boundary changes and inclusion of Bankstown ▪ Close functional interaction and economic/social links between these councils (except Bankstown) ▪ Need for a stronger council to manage proposed Liverpool regional centre ▪ Transfer of western Liverpool to Camden would facilitate integrated development of SW Growth Centre, and would improve balance of new area if Bankstown is included
Hornsby, Ku-Ring-Gai	<ul style="list-style-type: none"> ▪ Amalgamate or ▪ Combine as strong County Council and ▪ Boundary with Parramatta and/or Ryde shifted to M2 	<ul style="list-style-type: none"> ▪ Projected 2036 population 340,000, less with Parramatta/Ryde boundary change ▪ See comments above re Parramatta boundary change ▪ Current boundaries at Epping are problematic for effective planning and development of the centre ▪ Strong socio-economic and urban links
Hunters Hill, Lane Cove, Mosman,	<ul style="list-style-type: none"> ▪ Amalgamate or ▪ Combine as strong County Council and ▪ Possibly include eastern part 	<ul style="list-style-type: none"> ▪ Projected 2036 population 256,000 (excluding Ryde) ▪ Close functional interaction and economic/social links between these councils

Council/s	Options (preferred option in bold)	Comments
North Sydney, Willoughby		<ul style="list-style-type: none"> Need for integrated strategic planning for Lower North Shore, development of major centres, Sydney Harbour foreshores etc 3 of these councils will have fewer than 40,000 people in 2036
Hurstville, Kogarah, Rockdale	<ul style="list-style-type: none"> Amalgamate or Combine as strong County Council and Adjust Rockdale boundary at airport 	<ul style="list-style-type: none"> Projected 2036 population 282,000 Close functional interaction and economic/social links between these councils Need for unified local government to plan and manage major centres, redevelopment, foreshores etc
Manly, Pittwater, Warringah	<ul style="list-style-type: none"> Amalgamate or Combine as strong County Council 	<ul style="list-style-type: none"> Projected 2036 population 290,000 Close functional interaction and economic/social links between these councils which constitute an 'island' in the metro region Need for integrated planning of centres, coast, transport etc
Bankstown	<ul style="list-style-type: none"> Amalgamation with Fairfield and eastern part of Liverpool or Combine as strong County Council with Liverpool and Fairfield or Amalgamate with part or all of Canterbury or No change 	Projected 2036 population of 242,000 on its own
Blacktown	<p>No change except</p> <ul style="list-style-type: none"> Possible boundary adjustments with The Hills and Hawkesbury to facilitate NW Growth Centre 	Projected 2036 population 517,000 on its own
Blue Mountains	No change	<ul style="list-style-type: none"> Specialised role in managing urban areas within National Parks Projected 2036 population 95,000
Camden	<p>No change except</p> <ul style="list-style-type: none"> Possible boundary adjustment with Liverpool to facilitate SW Growth Centre and Possible boundary adjustment with Wollondilly at South Camden 	Projected 2036 population 262,000 on its own
Campbelltown	<p>No change except</p> <ul style="list-style-type: none"> Possible boundary adjustment with Liverpool and/or Camden to facilitate SW Growth Centre 	Projected 2036 population 245,000 on its own
Canterbury	<ul style="list-style-type: none"> Amalgamate with St George group, or Bankstown or Marrickville or Split between Bankstown and Inner West group or Include in a strong County Council 	<ul style="list-style-type: none"> Projected 2036 population 165,000 on its own Distinction between higher income east/south and lower income north-west: any boundary changes should maintain or enhance socio-economic mix Problematic existing boundaries to north and east
Hawkesbury	<p>No change except</p> <ul style="list-style-type: none"> Possible boundary adjustments with The Hills and Blacktown to facilitate NW Growth Centre and 	<ul style="list-style-type: none"> Specialised role in managing peri-urban fringe May require further boundary adjustments depending on urban growth patterns Projected 2036 population 94,000 (without boundary adjustments)

Council/s	Options (preferred option in bold)	Comments
	<ul style="list-style-type: none"> ▪ Possible longer term merger with The Hills 	<ul style="list-style-type: none"> ▪ Possible longer-term merger with The Hills
The Hills	<p>No change except</p> <ul style="list-style-type: none"> ▪ Boundary with Parramatta shifted to M2 and ▪ Possible boundary adjustments with Blacktown and Hawkesbury to facilitate NW Growth Centre and ▪ Possible longer term merger with Hawkesbury 	<ul style="list-style-type: none"> ▪ See comments above re Parramatta boundary change ▪ Projected 2036 population 284,000 – would be reduced somewhat by boundary adjustment with Parramatta
Leichhardt	<ul style="list-style-type: none"> ▪ Amalgamate with Sydney group or Inner West group 	<ul style="list-style-type: none"> ▪ Projected 2036 population 60,000 on its own ▪ Close links in both directions ▪ Inclusion of both Leichhardt and Marrickville in new ‘super Sydney’ council or County Council would further strengthen planning and management of the heart of the global city
Marrickville	<ul style="list-style-type: none"> ▪ Amalgamate with Sydney group or Inner West group or Canterbury 	<ul style="list-style-type: none"> ▪ See above ▪ Projected 2036 population 92,000 on its own
Penrith	No change	<ul style="list-style-type: none"> ▪ Projected 2036 population 246,000 on its own ▪ Focus on growth management and new regional centre
Sutherland	No change	Projected 2036 population 255,000 on its own
Wollondilly	<p>No change except</p> <ul style="list-style-type: none"> ▪ Possible boundary adjustment at South Camden and ▪ Possible longer term merger/s with Camden/Campbelltown/Wingecarribee 	<ul style="list-style-type: none"> ▪ Specialised role in managing peri-urban fringe ▪ May require further boundary adjustments with Camden, Campbelltown and Penrith depending on urban growth patterns ▪ Scope for closer linkages with Wingecarribee, perhaps eventual merger of ‘non-metropolitan’ areas ▪ Projected 2036 population 70,000 (less if boundary adjustments)

16. Strengthen the Hunter, Central Coast and Illawarra

The Hunter and Illawarra regions are vital ‘engine rooms’ of the NSW economy, and local government has a vital role to play in ensuring sound regional development. The Central Coast has close links with the southern edge of the Hunter, is growing rapidly, and would also benefit from stronger governance.

Hunter

The Hunter region consists of nine local government areas. Details are shown in Table 5 and on Map 5.

Table 5: Characteristics of Hunter Region Councils

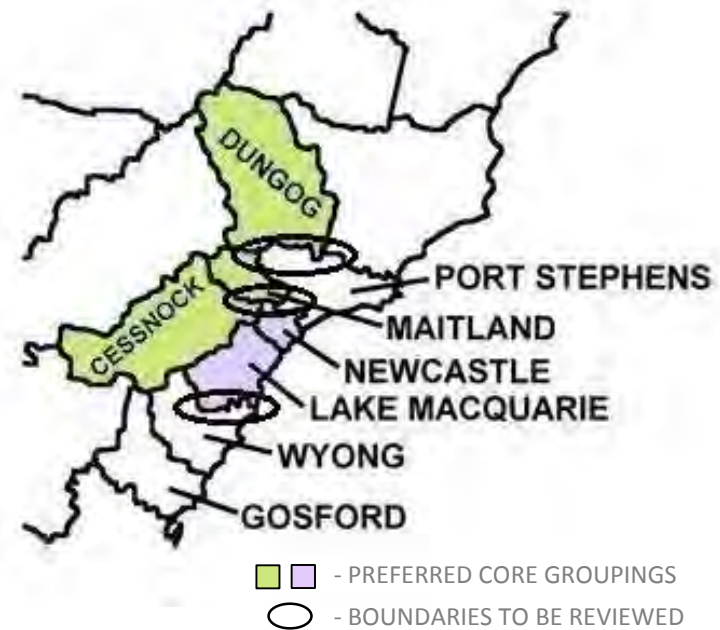
Council	TCorp Rating	Projected 2036 Population
Cessnock	Moderate-Negative	70,200
Dungog	Weak-Negative	9,900
Lake Macquarie	Moderate-Neutral	234,500
Maitland	Moderate-Neutral	118,800
Muswellbrook	Moderate-Neutral	18,500
Newcastle	Moderate-Negative	179,200
Port Stephens	Moderate-Neutral	91,600
Singleton	Moderate-Neutral	31,900
Upper Hunter	Sound-Negative	13,000

For the Upper Hunter the Panel proposes that a multi-purpose County Council be established to include the Singleton, Muswellbrook and Upper Hunter councils. The Panel does not see any need to amalgamate these councils in the short-medium term, but the situation should be reviewed in 2020.

The Lower Hunter presents a range of difficult issues. The financial positions of Newcastle, Cessnock and especially Dungog give grounds for concern, and there are complex socio-economic linkages, urban development patterns and council boundaries. The quality and stability of governance has also been an issue in some councils.

The Panel has concluded that Dungog should be merged with Maitland and perhaps also Cessnock to help address its long term sustainability problems. Even though Dungog is growing it is unlikely to have an adequate revenue base to deal with infrastructure backlogs and needs. Inclusion of Cessnock would create a central Hunter council with a 2036 population of 188,000 and much greater capacity, enabling a fresh and more strategic approach to growth management and economic and social development. It would also resolve some emerging boundary issues. The Beresfield area of Newcastle could also be included as it is closely linked to Maitland and separated by a major wetland from the rest of Newcastle.

Map 5: Lower Hunter Options



The City of Newcastle faces significant challenges including forecast operating deficits, large capital works requirements and demanding issues associated with urban renewal. Its southern suburbs merge seamlessly into the Lake Macquarie area to form a single metropolis that needs to be planned and managed as an integrated whole. The Panel sees this as a fundamental factor in determining the future structure of local government in the Lower Hunter. It has therefore concluded that Newcastle and Lake Macquarie should be amalgamated to form a new council with a projected population of around 400,000 in 2036. At the same time, there may well be a case for the southern area around Morriston to be added to Wyong or a new Central Coast council, reflecting expected patterns of urban growth and an orientation towards Sydney.

Port Stephens council appears likely to remain sustainable in its present form well into the future, and there are no pressing boundary issues. The only change to be considered at this time is the possible transfer of the area west of the Williams River to the amalgamated Dungog-Maitland. This needs to be investigated further.

In addition to the proposed amalgamations in the Lower Hunter, there is a case for a multi-purpose County Council or Council of Mayors to undertake strategic sub-regional functions (but water and sewerage would remain the responsibility of Hunter Water). If amalgamations do not take place, a County Council would be essential and consideration could then be given to a single body for the whole Hunter region.

Central Coast

Gosford and Wyong exhibit very strong socio-economic and functional linkages. The two councils already form a regional organisation and have been planning a joint water corporation for several years. Amalgamation has been discussed from time to time and recently came close to fruition, but the impetus appears once again to have been lost. The 2036 projected population for the two combined is 450,000 – large but not exceptional.

Options for the Central Coast are a full amalgamation or a multi-purpose County Council. The Panel does not believe a separate water corporation should proceed before those options have been properly evaluated. If amalgamation is deferred, then a County Council should be established immediately and assume responsibility for water along with other strategic functions.

Illawarra

For the purposes of this paper, the Illawarra region is defined somewhat narrowly as the areas of Wollongong, Shellharbour and Kiama. All three councils are currently rated Moderate by TCorp. Shellharbour has a Negative Outlook, but has proposed a Special Rate Variation to address the issues involved. In terms of economic, social, environmental and transport linkages, and for strategic planning purposes, the councils form a well-established region and have cooperated for many years through what is now the Southern Councils group, although shared services activity is very limited.

Like the Hunter, the Illawarra faces major economic and social challenges, coupled with substantial urban growth in Wollongong and Shellharbour. The Panel has considered whether a merger or mergers are necessary at this stage. It has taken into account a combination of four key factors:

- Each council appears sustainable for at least the medium term
- Existing boundaries do not pose significant urban management problems
- Water supply and sewerage are handled separately by Sydney Water
- Kiama's distinctive rural and coastal setting and 'country town' character, compared to Wollongong and Shellharbour.

On that basis, the Panel considers that closer collaboration through a County Council arrangement should enable a sufficient response to regional challenges for some time to come. Emerging issues should be kept under review. If amalgamation options need to be revisited, the Panel suggests that Shoalhaven might be a more appropriate partner for Kiama than Wollongong-Shellharbour.

Preferred Options for Consultation

- Mergers and boundary changes in the Lower Hunter as shown on Map 5
- Establish a multi-purpose Upper Hunter County Council
- Amalgamate Gosford and Wyong to create a new Central Coast council, and add the Morriston area of Lake Macquarie
- Establish a multi-purpose Illawarra County Council responsible for strategic functions other than water and sewerage.

17. Establish a ‘Western Region Authority’

The Panel was asked to give particular consideration to governance and whole-of-government service delivery in the far west of NSW, including issues affecting Aboriginal communities. The Panel selected the local government areas of Bourke, Brewarrina, Central Darling and Walgett, plus the Unincorporated Area for initial examination. However, the total area to be considered may also include Cobar, and parts of Wentworth and Balranald Shires, as well as Broken Hill. Detailed discussions will be held with those councils before recommendations are finalised.

A supplementary paper *Strengthening NSW Remote Communities – the Options* is being prepared to provide more detail about possible models, analyse their strengths and limitations, and identify issues needing further consideration. This will be available on the Panel’s website.

Key issues

The populations of all NSW remote communities have declined and this will continue. People are leaving for a number of reasons, including lack of educational, social and employment opportunities; gaps in service provision; and the challenges of living in a harsh environment. The possibility of even higher levels of disadvantage and failing social capital is something that communities find hard to accept, but that governments must seriously consider.

Aboriginal people comprise up to 60% of the population of remote NSW communities, and their numbers are increasing. The future of western NSW is thus closely intertwined with that of Aboriginal communities, which are becoming younger. Aboriginal people will need to take on leadership roles.

Another issue is the longer-term future of several councils across the region that have very limited resources relative to the challenges they face. Some will need to consider conversion to Local Board status and there may well be a case to progressively expand the Unincorporated Area into adjoining shires.

Need for a stronger system of local governance

Within remote communities there is often little trust and collaboration between different groups. The Panel has observed unhealthy competition for resources and services with a lack of leadership at all levels of government. This is symptomatic of communities under stress and a governance system that is failing to conceptualise the issues, make bold decisions and get on with doing what is necessary. Serious deficiencies in whole-of-government service delivery include:

- Duplication, inefficiency and lack of transparency in funding
- Poor coordination between agencies and non-government organisations
- No strategic focus around localised priorities and community capacity building
- Inadequate or non-existent accountability mechanisms for service delivery outcomes
- No long-term strategies for building economic prosperity and employment opportunities (Regional Development Australia programs do not focus on the more remote locations)
- Absence of a ‘social contract’ that defines the value governments place on remote communities – without this little is going to change and initiatives will continue to be spasmodic rather than systematic and sustainable.

Future governance options

It is clear that current governance arrangements are not working well and are a threshold cause of policy and service delivery failure. Criteria for a new ‘built for purpose’ model are set out in Box 13. The Panel has considered various ways to address those criteria. Two options stand out: a County Council or a Regional Authority.

A County Council?

The Panel has examined a variant of the County Council model proposed for other regions. Broken Hill might become the major regional centre to support the County. The strengths of this option are that it is evolutionary, maintains a familiar model of local government and preserves local democracy. However, while it provides a better opportunity to develop whole-of-government approaches, it does not entail direct involvement of State and federal governments and other organisations. Moreover, it would probably fail to achieve stronger Aboriginal participation in local government and does not address issues for the Unincorporated Area.

Box 13: Criteria for a New Governance Model in Western NSW

- Provide a governance and service delivery structure that is capable, credible and trusted; adaptable to change; and sustainable in the longer term
- Preserve local democracy and the individuality of local communities
- Strengthen Aboriginal participation and leadership in governance by understanding the unique complexities and dynamics of Aboriginal representation, decision making and leadership
- Work for and in partnership with all communities, recognising the value of sense of place and purpose, and capitalising on existing and potential community capacities
- Give communities the best possible access to the services they need
- Formalise partnerships between spheres of government to create a ‘whole of government’ regional vision, with integrated funding and service delivery models focussed on localised priorities
- Sustain local economies and build long-term employment opportunities
- Continue to preserve a fragile environment
- Build social capital through community participation and trusting social relationships
- Engender a strong belief that ultimately communities themselves must be substantially responsible for their own destinies
- Demonstrate integrity and application of best practice governance principles in the overall community interest.

A Western Region Authority

This option establishes a joint Regional Authority which brings together remaining local councils, new Local Boards, Aboriginal Local Land Councils, the Murdi Paaki Regional Assembly, the Unincorporated Area, and NSW and federal government agencies in a single structure. Councils and/or Local Boards would continue to provide local representation and some service delivery, but under the aegis of the Authority.

The Authority would be established under new, special-purpose legislation. It would consist of an independent chair, mayors, chairs of Local Boards, delegates of Aboriginal communities, community members elected by residents of the Unincorporated Area/s, and State and federal representatives. It would employ its own staff.

The Authority’s functions would include, but not be limited to:

- Preparation and implementation of an inter-governmental Regional Strategic Plan to establish agreed outcomes and priorities for joint efforts
- Implementation (through agencies and NGOs) of an integrated package of programs and services geared to agreed outcomes
- Delivery of services to Unincorporated Areas
- Delivery of specific NSW and federal government services across the region
- Business planning and project management for major infrastructure works
- Strategic procurement
- Support to councils and Local Boards.

Working Together

The issues confronting far western NSW can only be addressed by a genuine commitment on all sides to ‘working together’. This boils down to finding ways to build the trust and mutual respect that is lacking at present. Governance arrangements on their own cannot do this, but a ‘fresh start’ in regional governance could make a real difference.

Preferred Option for Consultation

Further development of the concept of a Western Region Authority along the lines proposed in this section.

18. Progress the State-Local Agreement

The recent signing of a new State-Local Government agreement represents a further important step in the improving relationships that have developed over the past two years. The references to strategic partnerships and creating a framework for further cooperation are especially encouraging. Overall, the agreement flags moves to advance State-local cooperation similar to those that have been taken successfully in other jurisdictions.

Underlying several of the Panel's proposals is the idea that State and local governments need to be seen as complementary elements of a broader NSW public sector. In the past there has been a sense that the two are competing for resources and recognition, rather than looking for ways to pool funds and skills in order to achieve agreed local, regional and state-wide objectives. This sense of separation and competition has been accentuated by what the Panel described in *Case for Sustainable Change* as a 'master-servant' culture: a grudging acceptance in local government of its perceived lesser status, and an evident belief amongst some at the State level that 'local' necessarily means 'inferior'.

A concerted effort is now required to build swiftly on the principles of cooperation and new working arrangements set out in the State-Local Government agreement. This should involve in particular:

- Pursuing the range of options for joint strategic planning set out below
- Establishing State-local relations as a key function of the Premier's cluster of departments – the Premier's Department itself, Division of Local Government, Department of Planning and Infrastructure, and Office of Environment and Heritage, which together could lead a new culture of cooperation with local government
- Including representatives of the proposed County Councils on the Premier's Department high-level Regional Leadership Groups
- Building a stronger local government association that can present a united view and negotiate more effectively on behalf of the sector (see section 19)

- Strengthening recognition of democratic local government in the NSW Constitution (discussed below).

A balanced package of reforms

The clear goal of the *Destination 2036* process, referenced in the State-Local Government agreement, is for State and local governments to work together on a series of reforms that will achieve the vision of 'strong communities through partnerships'.

Negotiation is unquestionably the best way to achieve lasting reform, but it requires give-and-take. The package being put together by the Panel will contain some elements that sections of local government will oppose strongly – amalgamations are an obvious example. Equally, the State government may feel uncomfortable about streamlining rate-pegging. The Panel hopes that all those concerned on both sides will see that the greater good, especially the goal of strong communities, will best be achieved by a balanced package. The State-Local Government agreement paves the way for an early start to negotiations.

Joint strategic planning

There is evident support amongst State agencies for a closer working relationship with local government – but this depends on two factors:

- The willingness and capacity of councils are to work more closely with each other and with the State on a regional basis
- Local government becoming a 'real' partner that contributes substantial resources and expertise to joint programs and projects.

The Panel's proposal for 'new look' County Councils is intended to create the right platform for effective State-local collaboration. An obvious starting point is joint strategic planning. There are a number of opportunities for this:

- Formulation of the next generation of Regional Action Plans under the State Plan – local councils or County Councils could in many instances be identified as ‘lead agencies’ for implementation projects
- Regional land use strategies and sub-regional ‘Delivery Plans’, especially in the metropolitan area and coastal regions facing intense growth pressures and infrastructure needs – local government can contribute both planning expertise and resources for implementation
- Establishment of ‘Regional Road Groups’ along the lines of those in Queensland, as discussed in section 7
- Local Land Services – working through County Councils local government can partner the new regional agencies for natural resource management.

For its part, local government could reasonably expect State agencies to become ‘real’ partners in the processes of preparing and implementing Community Strategic Plans and Delivery Programs, so that those documents are closely aligned with other strategic plans, become key inputs to the State Plan, and shared vehicles for implementation of relevant State strategies and programs at local and regional levels.

Constitutional recognition

The Panel has been asked on many occasions to comment on current proposals for so-called ‘financial recognition’ of local government in the Commonwealth Constitution. This is a matter covered by the *Destination 2036* Action Plan, but is beyond the Panel’s terms of reference. However, the Panel is interested in the possibility of amending the *State* Constitution to afford greater recognition and protection to democratic local government. This is relevant to the Panel’s consideration of governance issues.

The current wording of section 51 of the NSW Constitution is as follows:

(1) There shall continue to be a system of local government for the State under which duly elected or duly appointed local government bodies are constituted with responsibilities for acting for the better government of those parts of the State that are from time to time subject to that system of local government....

The effect of the words ‘or duly appointed’ in section 51(1) could be to allow *elected* local government to be completely dismantled. The NSW provisions contrast with those in Queensland and Victoria (see Box 14). The Panel feels that some strengthening of the position of democratic local government in NSW is warranted and should form part of a balanced package of reforms. It will canvass this issue in consultations over the coming months.

Box 14: Local Government in Queensland and Victorian Constitutions

Queensland

71 (1) A local government is an elected body that is charged with the good rule and local government of a part of Queensland allocated to the body.

Victoria

74A (1) Local government is a distinct and essential tier of government consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.

Preferred Option for Consultation

- Follow-up the State-local Government agreement with further tangible measures to secure practical collaboration between local government and State agencies, especially through State Plan implementation processes and other opportunities for joint strategic planning, as well as MOUs for specific areas of joint activity
- Develop a balanced package of local government reforms to be pursued under the provisions of the agreement
- Strengthen recognition of elected local government in the NSW Constitution.

19. Refocus Local Government NSW

The recent establishment of a single association for NSW councils – Local Government NSW – is to be applauded. It opens the door for a fresh start in the way local government presents itself to communities, State and federal governments, and other key stakeholders. As indicated in *Case for Sustainable Change*, the new association faces the challenge of leading a change of attitude and culture in a sector that has tended to dwell on its misfortunes (real or perceived) and to focus more on its disparate interests than the ‘big picture’.

This culture was reflected in the structures and operations of the former Local Government and Shires Associations. They were conceived as essentially ‘political’ organisations, representing differing groups within local government and focused strongly on advocacy – sometimes strident. Whilst the associations also provided a number of important services to their members, efforts in policy and program development tended to be limited and often dependent on grant funding. The 2006 ‘Allan’ report on sustainability was a major policy initiative, but not fully followed through – unlike the South Australian review on which it was modelled.

Local Government NSW (LGNSW) needs to be a strong and decisive sector leader that has the full backing of its member councils. The new State-Local Government agreement (discussed in more detail in the previous section) offers a great opportunity for the sector to chart its future within a broad

framework of reform. The Panel notes in particular section 4.2 of the agreement:

Local Government NSW is responsible for providing leadership and guidance to the local government sector across a wide variety of functions...as well as working with the local government sector in accordance with the agreed Principles, and driving the shared vision for local government in partnership with the NSW State Government.

This undertaking by the association carries very significant implications for the way it relates to its member councils and conducts its affairs. Those implications become even more apparent in the context of the Agreement’s first principle: “State and Local Government will work together as drivers of change and improvement to achieve strong communities through partnership.”

The Panel strongly supports and urges the emergence of a revitalised association that gives priority to this agenda of change and improvement. This suggests an emphasis on proactive, policy based initiatives to strengthen the sector’s capacity and credibility. Resources will need to be found for expanded capacity building programs, and conferences will need to focus much more on strategic issues. This approach has been followed successfully by sister organisations in other states.

Promotion of good governance is essential. The Panel is aware of action currently being taken by the

association to strengthen professional development for councillors and provide mentoring for mayors. These are important steps in the right direction. However, as discussed in section 10, all too often local government’s reputation is sullied by the actions of individual councillors or elected bodies that appear contrary to good governance and – rightly or wrongly – lead to State intervention. The Panel believes that LGNSW should give a high priority to reputation management and play a stronger role in handling these situations. Over time this should make it possible for the State to reduce its activities in oversighting and regulating the sector. This approach is already evident in some other states, notably South Australia.

As a corollary, the Panel considers that the position of president of LGNSW will need to be invested with significantly increased stature and authority. In the eyes of the public and other governments, the president will personify local government and he or she must be able to act accordingly, as both an advocate and a champion of necessary reform.

Preferred Option for Consultation

Detailed consideration of ways in which Local Government NSW can lead reform and development of the sector, and a new partnership with the State, in accordance with principles and provisions of the State-Local Agreement.

20. Drive and Monitor Ongoing Reform

As the Panel has made clear, it believes that creating better, stronger local government requires wide-ranging reforms to respond to a changing world. The alternative is a local government sector characterised by an increasing number of under-resourced, under-performing councils that will steadily become irrelevant in the wider system of government. Either there is a change of direction, or much of local government faces a dead-end.

Establish a Local Government Development Board

Whatever decisions are made regarding amalgamations, there is much that can and should be done, and a substantial package of reforms will need to be pursued vigorously over several years. The Panel therefore proposes establishment of a *temporary* Local Government Development Board (LGDB) to work alongside the Division of Local Government (DLG) and Local Government NSW (LGNSW) during the next 3-4 years.

The LGDB could comprise members appointed jointly by the Minister and the President of LGNSW, and should include a nominee of the President and the Chief Executive of DLG. It should have a small Sydney-based secretariat drawn from DLG, which would require some additional resources for this purpose. The Board's functions would include:

- Ensuring regular communication and consultation with and between all relevant parties to promote implementation of the Panel's proposals (as adopted by the State government), and to ensure that the strategic direction of the approved package is upheld
- Negotiating and guiding establishment of the proposed County Councils, as well as the progressive conversion of small rural-remote councils to Local Boards
- Facilitating agreed amalgamations and establishment of Local Boards in urban areas
- Providing change management support to councils undergoing significant transitions or amalgamations (using expert consultants)
- Working with relevant State and federal agencies, councils and representatives of Aboriginal communities to facilitate establishment of the Western Region Authority
- Developing a long term capacity building program in conjunction with DLG and LGNSW
- Overseeing the development and introduction of the new performance monitoring and benchmarking arrangements proposed in section 9
- Monitoring progress and conducting a broad review of the position reached after 3 years (early 2016).

Incentives for voluntary amalgamations

The Panel was particularly asked to consider barriers and incentives for voluntary amalgamations. The barriers are evident from many of the submissions received; they include:

- Fear of loss of local identity and democratic representation
- Anticipated disruption and costs, and inevitable institutional inertia
- (Understandable) self-interest of current councillors and some staff who may lose their positions
- Lack of understanding of both the full consequences of resisting change in the longer term, and of potential benefits
- The difficulty of spelling out in detail the likely benefits unless and until there is a commitment to detailed planning.

For voluntary amalgamations to gain ground, a substantial package of incentives – some carrots and some sticks – would be required. This might involve:

- Making it clear that 'no change' is not an option, and that Government is committed to steps such as the referral of strategic functions to County Councils and conversion of small councils to Local Boards

- Publication via the LGDB of unbiased information for local communities about the pros and cons of mergers
- Enabling the establishment of Local Boards to ensure continuation of democratic, community-level governance where amalgamation would create large new councils
- Similarly, allowing an increased number of councillors in the first term after amalgamation to ensure adequate local representation during the transition phase
- Providing transitional funding via grants and low- or no-interest loans
- Conditional exemption from rate-pegging for, say, 3 years, with the promise of 'permanent' exemption if the new council demonstrates a high standard of financial planning and management and community engagement (subject to periodic review)
- Professional change management support for negotiating, planning and implementing mergers
- Offering a higher level of support (both financial and professional) to 'early movers' (e.g. those committing to a merger by July 2014).

Consideration might also be given to streamlining the provisions of the Local Government Act relating to community consultation in those cases where an amalgamation is voluntary and there appears to be broad community support. In such circumstances the current requirement for electors to be individually surveyed or polled could simply

encourage small groups of opponents to engage in populist politics. On the other hand, seeking to amend the Act might prove divisive.

Professional support to help councils consider, plan and implement mergers could prove especially helpful. The Panel's research showed that the 2004 amalgamations were poorly planned and as a result gave rise to unnecessary concerns and disruption. Future amalgamations need to be handled much better. The research also showed that better information and careful analysis of relevant issues can smooth the path to a decision to merge. Moreover, increased benefits for residents and ratepayers can be realised more quickly and more certainly if mergers are thoroughly planned and the necessary expertise in change management is available in the period immediately before and after the new council comes into being. Whilst providing this kind of support may not convince those adamantly opposed to amalgamations in any form, it might tip the balance in some cases.

Role of the Boundaries Commission

As noted in section 2, unless the Local Government Act is changed the Boundaries Commission would continue to have a role in any amalgamations. In recent years, however, the Commission has been largely inactive. Under amendments to the Local Government Act passed in 1999, most of the Commission's responsibilities for researching and reviewing proposed amalgamations and boundary changes can now be undertaken by the Chief Executive of DLG. In the 2003-04 amalgamations,

the Commission's role was limited to providing advice to the Minister on the then Director General's reports.

A more proactive Boundaries Commission – one that regularly surveys the need to update the structures of local government across the state and that itself initiates proposals for change – could do much to lessen the long periods of 'do-nothing' and consequent build-up of pressure and frustration that have characterised structural reform in NSW. In this regard, the important point is that the Commission can be seen to be independent and impartial, whereas the DLG is under ministerial direction. Models used in New Zealand and South Africa are worth exploring.

Reposition the Division of Local Government

The Panel has referred earlier to the need to transform the compliance culture in local government, for a change in the focus of LGNSW, and for the DLG and LGNSW to work together to drive reform. These proposals have significant implications for the role, ethos and image of the DLG itself.

As indicated earlier, the Panel attaches considerable importance to DLG's positioning within the Premier's cluster of departments, and hence to DLG's capacity to engage key agencies in the local government reform and development process.

Currently, however, there are many in local government who associate the DLG primarily with enforcing compliance, investigating wrongdoing and intervening in problem situations. The Panel recognises that this is not the Division's intention, as shown by the restructuring of its operations in 2011 to emphasise innovation and sector development. Nevertheless the perception remains and there is an evident need for the Division to present itself more clearly as seeking to advance a positive agenda. Useful steps might include providing further support for the ongoing development and rollout of IPR, reframing the Promoting Better Practice program, and wherever possible cutting back those areas of reporting and compliance under the Division's direct control.

Future of Destination 2036

The great majority of actions to be undertaken as part of the *Destination 2036* Action Plan are to be completed by mid-late 2013. This raises the question of whether and how the *Destination 2036* initiative should be subsequently refreshed and progressed. The Panel sees a possibility that the current *D2036* Implementation Steering Committee (ISC) might be wound up towards the end of 2013. Any outstanding matters could then be handled by the LGDB, which could establish a broadly-based advisory committee to inform and support its work.

Legislative implications

The Panel will provide the Minister for Local Government and the Local Government Acts Task Force with detailed advice on those elements of its proposals that involve changes to the Local Government Act. Agreed changes can then be made through either the comprehensive review and re-writing of the Act being undertaken by the Task Force, and/or a modest package of amendments to cover any issues needing earlier attention.

Preferred Option for Consultation

- Establish a Local Government Development Board for a maximum period of 4 years with a brief to drive and support a concerted program of reform
- Introduce a package of incentives for voluntary mergers that offers a higher level of support to 'early movers'
- Undertake a broad review of progress with the reform package in early 2016
- For the longer term, reconstitute the Boundaries Commission as a proactive organisation that initiates and conducts regular reviews of local government structures and boundaries
- Similarly, further strengthen the role of the Division of Local Government in promoting and supporting innovation and development.



Attachment: Preferred Options for All Councils

Review in 2016 if merger not completed or council has not converted to Local Board status. ^Review in 2020. '/' means and/or. 'CC' means County Council.

Council	Preferred Option (for consultation)
Albury	Regional Centre, Upper Murray CC
Armidale Dumaresq	Regional Centre, New England-Tablelands CC
Ashfield	Merge – Inner West group
Auburn	Merge – Parramatta group
Ballina	Council in Northern Rivers CC
Balranald#	Part of Western Region Authority/Local Board in Lower Murray CC (to be reviewed)
Bankstown	Merge – Liverpool group (to be reviewed)
Bathurst Regional	Regional Centre, Mid-West CC
Bega Valley	Council in South Coast CC
Bellingen	Council in North Coast CC
Berrigan^	Merge with Jerilderie/Urana/Corowa
Blacktown	No change (possible boundary adjustments)
Bland#	Merge with Forbes/Weddin
Blayney^	Merge with Orange
Blue Mountains	No change
Bogan#	Local Board in Orana CC
Bombala#	Merge with Snowy R/Cooma-M
Boorowa#	Merge with Harden/Young
Botany Bay	Merge – Sydney group
Bourke#	Part of Western Region Authority
Brewarrina#	Part of Western Region Authority
Broken Hill	Part of Western Region Authority (to be reviewed)
Burwood	Merge – Inner West group
Byron	Council in Northern Rivers CC
Cabonne	Merge with Orange
Camden	No change (possible boundary adjustments)
Campbelltown	No change (possible boundary adjustments)
Canada Bay	Merge – Inner West group
Canterbury	Merge – St George group (to be reviewed)
Carrathool#	Merge with Griffith
Central Darling#	Part of Western Region Authority
Cessnock	Merge with Maitland/Dungog
Clarence Valley	Council in North Coast CC
Cobar#	Part of Western Region Authority (to be reviewed)
Coffs Harbour	Council in North Coast CC
Conargo#	Merge with Deniliquin/Murray

Council	Preferred Option (for consultation)
Coolamon#	Merge with Temora/Junee
Cooma-Monaro	Regional Centre, Snowy-Monaro CC
Coonamble#	Local Board in Orana CC
Cootamundra^	Merge with Junee/Temora
Corowa	Merge with Berrigan/Jerilderie/Urana
Cowra	Council in Central West CC
Deniliquin^	Merge with Conargo/Murray
Dubbo	Regional Centre, Orana CC
Dungog	Merge with Maitland/Cessnock
Eurobodalla	Council in South Coast CC
Fairfield	Merge – Liverpool group
Forbes^	Merge with Weddin/Bland
Gilgandra#	Local Board in Orana CC
Glen Innes Severn^	Merge with Tenterfield
Gloucester#	Merge with Great Lakes/Greater Taree
Gosford	Merge with Wyong
Goulburn Mulwaree	Council in Capital CC
Great Lakes	Council in Mid Coast CC
Greater Hume^	Merge with Albury
Greater Taree	Council in Mid Coast CC
Griffith	Regional Centre, Murrumbidgee CC
Gundagai#	Merge with Tumut
Gunnedah	Council in Namoi CC
Guyra#	Merge with Armidale Dumaresq
Gwydir#	Merge with Moree Plains
Harden#	Merge with Boorowa/Young
Hawkesbury	No change (possible boundary adjustments)
Hay#	Local Board in Murrumbidgee CC
The Hills	No change (possible boundary adjustments)
Holroyd	Merge – Parramatta group
Hornsby	Merge with Ku-ring-gai
Hunters Hill	Merge – North Shore group
Hurstville	Merge – St George group
Inverell	Council in New England-Tablelands CC
Jerilderie#	Merge with Berrigan/Urana/Corowa
Junee^	Merge with Cootamundra/Wagga Wagga

Council	Preferred Option (for consultation)
Kempsey	Council in Hastings-Macleay CC
Kiama	Council in Illawarra CC
Kogarah	Merge – St George group
Ku-ring-gai	Merge with Hornsby
Kyogle^	Merge with Richmond Valley
Lachlan#	Merge with Parkes/Bland
Lake Macquarie	Merge with Newcastle
Lane Cove	Merge – North Shore group
Leeton	Merge with Narrandera
Leichhardt	Merge – Sydney group (to be reviewed)
Lismore	Regional Centre, Northern Rivers CC
Lithgow	Council in Mid-West CC
Liverpool	Merge – Liverpool group
Liverpool Plains^	Council in Namoi CC
Lockhart#	Merge with Wagga Wagga
Maitland	Merge with Dungog/Cessnock
Manly	Merge with Warringah/Pittwater
Marrickville	Merge – Sydney group (to be reviewed)
Mid-Western Regional	Council in Mid-West CC
Moree Plains	Merge with Gwydir
Mosman	Merge – North Shore group
Murray^	Merge with Deniliquin/Conargo/Wakool
Murrumbidgee#	Merge with Griffith
Muswellbrook	Council in Upper Hunter CC
Nambucca	Council in North Coast CC
Narrabri	Council in Namoi CC
Narrandera#	Merge with Leeton
Narromine^	Merge with Dubbo
Newcastle	Merge with Lake Macquarie
North Sydney	Merge – North Shore group
Oberon^	Merge with Bathurst Regional
Orange	Regional Centre, Central West CC
Palerang	Merge with Queanbeyan
Parkes	Merge with Lachlan
Parramatta	Merge – Parramatta group
Penrith	No change
Pittwater	Merge with Warringah/Manly
Port Macquarie-Hastings	Regional Centre, Hastings-Macleay CC
Port Stephens	Council in Lower Hunter CC
Queanbeyan	Regional Centre, Capital CC

Council	Preferred Option (for consultation)
Randwick	Merge – Sydney group
Richmond Valley	Merge with Kyogle
Rockdale	Merge – St George group
Ryde	Merge – Parramatta group
Shellharbour	Council in Illawarra CC
Shoalhaven	Regional Centre, South Coast CC
Singleton	Regional centre, Upper Hunter CC
Snowy River	Council in Snowy-Monaro CC
Strathfield	Merge – Inner West group
Sutherland	No change
Sydney	Merge – Sydney group
Tamworth Regional	Regional centre, Namoi CC
Temora^	Merge with Coolamon/Junee
Tenterfield^	Merge with Glen Innes Severn
Tumbarumba#	Merge with Tumut
Tumut	Merge with Gundagai/Tumbarumba
Tweed	Council in Northern Rivers CC
Upper Hunter	Council in Upper Hunter CC
Upper Lachlan^	Council in Capital Region CC
Uralla^	Merge with Armidale Dumaresq
Urana#	Merge with Corowa/Jerilderie/Berrigan
Wagga Wagga	Regional centre, Riverina CC
Wakool#	Merge with Murray/Conargo/Deniliquin
Walcha#	Merge with Armidale Dumaresq
Walgett#	Part of Western Region Authority
Warren#	Local Board in Orana CC
Warringah	Merge with Manly/Pittwater
Warrumbungle^	Council in Orana CC
Waverley	Merge – Sydney group
Weddin#	Merge with Forbes/Bland
Wellington^	Merge with Dubbo
Wentworth^	Create new LGA; remainder part of Western Region Authority (to be reviewed)
Willoughby	Merge – North Shore group
Wingecarribee	Council in Capital CC
Wollondilly	No change (possible boundary adjustments)
Wollongong	Regional Centre, Illawarra CC
Woollahra	Merge – Sydney group
Wyong	Merge with Gosford
Yass Valley	Council in Capital CC
Young	Merge with Boorowa/Harden

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Note: Further research, evidence, submissions and supporting documentation considered by the Panel to inform this report is available for review on the Panel's website



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