



# **LOCAL GOVERNMENT ACTS TASKFORCE**

## **A NEW LOCAL GOVERNMENT ACT FOR NSW**

### **DISCUSSION PAPER**



4 April 2013

<b>EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>CHAPTER I – BACKGROUND &amp; INTRODUCTION .....</b>	<b>11</b>
1.1 Background .....	11
1.2 Introduction to the Local Government Acts Taskforce Members .....	11
1.3 Approach and Principles for the Development of the New Act .....	13
1.4 Purpose of the Discussion Paper .....	14
1.5. Limitations of Scope.....	15
<b>CHAPTER 2 – CONSULTATION OUTCOMES.....</b>	<b>17</b>
2.1. Preliminary Ideas Paper Consultation.....	17
2.2. Summary of Ideas and Suggestions Received through Workshops and Written Submissions.....	17
<b>CHAPTER 3 ELEMENTS OF A NEW LOCAL GOVERNMENT ACT .....</b>	<b>23</b>
3.1.1 Purposes of the Local Government Act.....	24
3.1.2 Role and Principles of Local Government .....	24
3.1.3 Constitution of councils .....	26
Part II – Strategic Framework for Local Government in NSW .....	28
3.2.1 Integrated Planning and Reporting .....	28
3.2.2 Community Consultation and Engagement.....	30
3.2.3 Technology.....	31
Part III – Council Operations .....	34
Governance Framework.....	34
3.3.1 Elections .....	34
3.3.2 Meetings .....	36
3.3.3 Appointment and Management of Staff .....	37
3.3.4 Formation and Involvement in Corporations and Other Entities .....	39
3.3.5 Protection from Liability.....	40
3.3.6 Code of Conduct .....	41
3.3.7 Pecuniary Interest.....	41
3.3.8 Delegations.....	42
Financial Governance .....	43
3.3.9 Financial Management.....	43
3.3.10 Procurement.....	44
3.3.11 Capital Expenditure Framework .....	46
3.3.12 Public Private Partnerships .....	48
3.3.13 Acquisition of Land.....	49
3.3.14 Public Land.....	50
3.3.15 Approvals, Orders and Enforcement.....	54
3.3.16 Water Management .....	57
3.3.17 Tribunals and Commissions .....	59
3.3.18 Performance of Local Government .....	59
<b>CHAPTER 4 - CITY OF SYDNEY ACT .....</b>	<b>61</b>
<b>CHAPTER 5 – CONCLUSIONS &amp; MAKING A SUBMISSION.....</b>	<b>65</b>
5.1 Making a Submission .....	65
5.2 Next Steps .....	66
<b>APPENDIX I – SUMMARY OF CONSULTATION FEEDBACK.....</b>	<b>67</b>
<b>APPENDIX II - LIST OF ABBREVIATIONS .....</b>	<b>84</b>

# 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

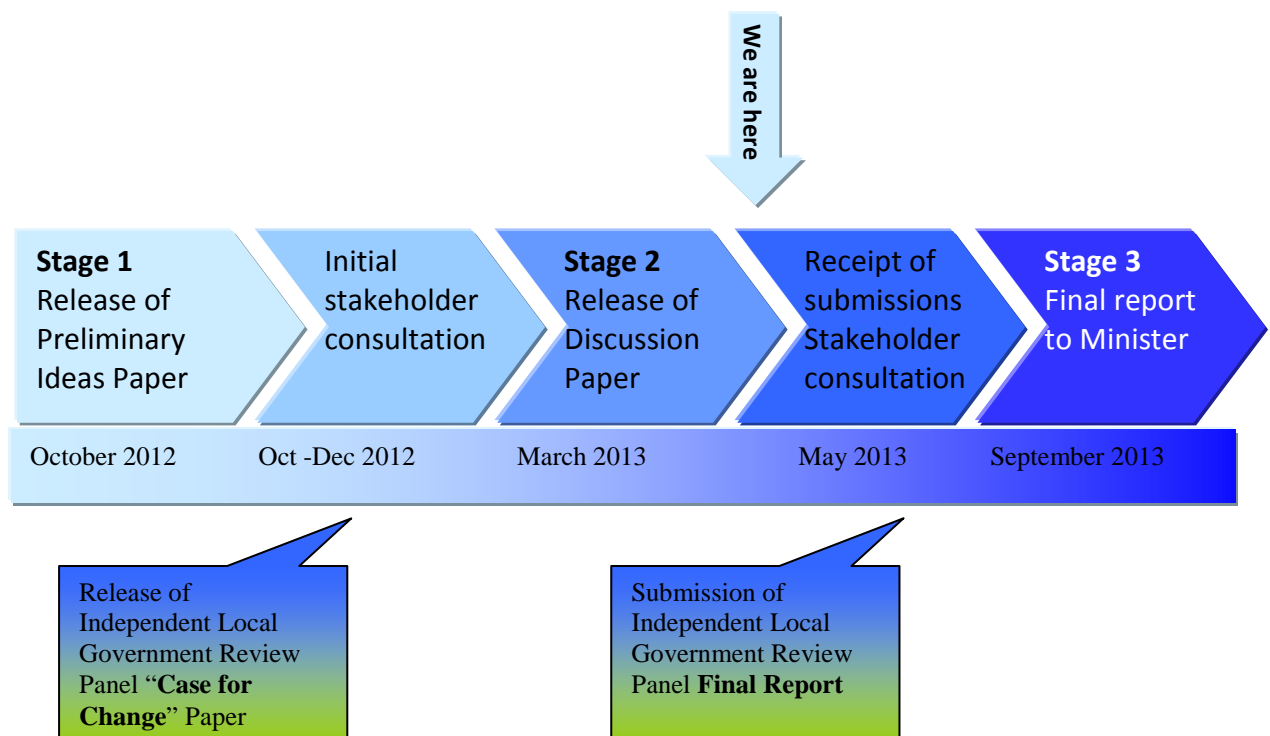
The Taskforce has also been requested to review the *City of Sydney Act 1988*. This Act provides special provisions unique to the City as the centre of government and business in NSW. In most other respects the Local Government Act applies. The main purposes of the City of Sydney Act are to make provisions 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](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
<b>Approach and Principles for the Development of the New Act</b>	1.3	<p>The Taskforce proposes:</p> <ul style="list-style-type: none"> <li>(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.</li> <li>(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.</li> </ul>
<b>Purposes of the Local Government Act</b>	3.1.1	<ul style="list-style-type: none"> <li>(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"> <li>(1) a legal framework for the NSW system of local government in accordance with section 51 of the <i>Constitution Act 1902 (NSW)</i></li> <li>(2) the nature and extent of the responsibilities and powers of local government</li> <li>(3) a system of local government that is accountable, effective, efficient and sustainable.”</li> </ul> </li> </ul>
<b>Role and Principles of Local Government</b>	3.1.2	<ul style="list-style-type: none"> <li>(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:  <b>“Role of Local Government</b>                      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"> <li>i) utilising integrated strategic planning</li> <li>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</li> <li>iii) providing and procuring effective, efficient and economic infrastructure, services and regulation</li> <li>iv) exercising democratic local leadership and inclusive decision-making</li> </ul> <b>Principles of Local Government</b>                      Principles to be observed by local government are to:                     <ul style="list-style-type: none"> <li>i) provide community-based representative democracy with open, unbiased and accountable government</li> <li>ii) engage with and respond to the needs and interests of individuals and diverse community groups</li> <li>iii) facilitate sustainable, responsible management, development, protection and conservation of the natural and built environment;</li> <li>iv) diligently address risk and long-term sustainability;</li> <li>v) achieve and maintain best practice public governance and administration, and to act fairly, responsibly, ethically, and in the public interest; and</li> <li>vi) optimise technology, and foster innovation and flexibility.”</li> </ul> </li> </ul>
<b>Integrated Planning and Reporting</b>	3.2.1	<p>The Taskforce proposes that:</p> <ul style="list-style-type: none"> <li>(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.</li> <li>(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.</li> <li>(iii) where possible relevant provisions from other sections of the Act be incorporated into IPR to reduce duplication. For example, capital</li> </ul>

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>
<b>Community Consultation and Engagement</b>	<b>3.2.2</b>	<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"> <li>• 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)</li> <li>• 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</li> <li>• ensuring that interested persons have adequate time and reasonable opportunity to present their views to the council in an appropriate manner and format</li> <li>• ensuring that the views presented to the council will be given due consideration</li> <li>• 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</li> <li>• arranging for special consultative procedures in particular instances.</li> </ul>
<b>Technology</b>	<b>3.2.3</b>	<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>
<b>Elections</b>	<b>3.3.1</b>	<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"> <li>• the most appropriate voting system – exhaustive preferential; optional preferential; proportional, or first past the post</li> <li>• the option of utilising electronic voting in the future</li> <li>• 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</li> <li>• half term elections for councillors, similar to Senate elections</li> <li>• the ward system being abolished</li> <li>• improving the adequacy of and access to candidate information prior to elections</li> <li>• the enrolment process and maintenance of the non-residential roll, particularly in the City of Sydney</li> </ul>
<b>Meetings</b>	<b>3.3.2</b>	<p>The Taskforce proposes:</p> <p>(i) the provisions relating to council meetings be:</p> <ul style="list-style-type: none"> <li>• reviewed, modernised and any unnecessary prescription and red tape removed,</li> <li>• designed to facilitate councils utilising current and emerging technologies in the conduct of meetings and facilitating public access; and</li> <li>• 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.</li> </ul>

Topic	Proposal No	Taskforce Proposals
<b>Appointment and Management of Staff</b>	<b>3.3.3</b>	<p>The Taskforce proposes:</p> <ul style="list-style-type: none"> <li>(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"> <li>• the general manager being responsible for determining the organisation structure and for recruiting appropriately qualified staff necessary to fulfill each role within the structure</li> <li>• 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</li> <li>• 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.</li> </ul> </li> <li>(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.</li> <li>(iii) in line with the principle of reducing prescription: <ul style="list-style-type: none"> <li>• 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</li> <li>• the EEO provisions be incorporated with the IPR processes and procedures</li> </ul> </li> <li>(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.</li> </ul>
<b>Formation and Involvement in Corporations and Other Entities</b>	<b>3.3.4</b>	<p>The Taskforce proposes to defer further consideration of this component of the legislation until the work of the Independent Panel is completed.</p>
<b>Code of Conduct</b>	<b>3.3.6</b>	<p>The Taskforce is not proposing any changes to the conduct provisions of the Act.</p>
<b>Pecuniary Interest</b>	<b>3.3.7</b>	<p>The Taskforce proposes that:</p> <ul style="list-style-type: none"> <li>(i) the pecuniary interest provisions be reviewed to ensure they are rewritten in plain language, easily understood and any unnecessary red tape removed.</li> <li>(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.</li> </ul>
<b>Delegations</b>	<b>3.3.8</b>	<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>
<b>Financial Governance</b>	<b>3.3.9</b>	<p>The Taskforce proposes:</p> <ul style="list-style-type: none"> <li>(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.</li> <li>(ii) there be a rebalancing of the regulatory focus of the legislative framework towards systems and risk management rather than process prescription.</li> <li>(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.</li> </ul>
<b>Procurement</b>	<b>3.3.10</b>	<p>The Taskforces proposes:</p> <ul style="list-style-type: none"> <li>(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.</li> <li>(ii) in relation to the current tendering threshold of \$150,000 rather than the legislation setting a dollar value threshold a more flexible principles-</li> </ul>



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>
<b>Capital Expenditure Framework</b>	<b>3.3.11</b>	<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>
<b>Public Private Partnerships</b>	<b>3.3.12</b>	<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>
<b>Acquisition of Land</b>	<b>3.3.13</b>	<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>
<b>Public Land</b>	<b>3.3.14</b>	<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"> <li>• require councils to strategically manage council-owned public land as assets through the IPR framework</li> <li>• balance reasonable protections for public land use and disposal where the land is identified as having significant value or importance</li> <li>• 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</li> <li>• 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</li> <li>• 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</li> <li>• recognise the LEP zoning processes and restrictions applying to council owned public land</li> <li>• 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</li> <li>• 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</li> <li>• 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.</li> </ul>

Topic	Proposal No	Taskforce Proposals
<b>Approvals, Orders and Enforcement</b>	<b>3.3.15</b>	<p>The Taskforce proposes:</p> <ul style="list-style-type: none"> <li>(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.</li> <li>(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.</li> <li>(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.</li> <li>(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.</li> <li>(v) to have regard to the findings and recommendations of the reports by IPART as they affect local government that are due mid-2013.</li> </ul> <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>
<b>Water Management</b>	<b>3.3.16</b>	<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>
<b>Performance of Local Government</b>	<b>3.3.18</b>	<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>
<b>City of Sydney Act</b>	<b>4.1</b>	<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><b>Submission 83 – Waverley Council</b></p> <p><b>Submission 35 – Manly Council</b></p> <ul style="list-style-type: none"> <li>• Modern</li> <li>• Flexible</li> <li>• Streamlined</li> <li>• Supporting diversity among councils</li> <li>• Written in plain language, and</li> <li>• Eliminates unnecessary red tape affecting councils and the public</li> </ul>	<p><b>Submission 69 – Council of the Shire of Bourke</b></p> <ul style="list-style-type: none"> <li>• 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</li> <li>• Concise with any additional information need to supplement the Act being provided via regulation or Practice Note</li> <li>• Readily understood and devoid of ambiguity and the need for legal interpretation</li> <li>• Be enabling and not restrictive</li> </ul>
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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](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 <a href="http://www.ipart.nsw.gov.au">www.ipart.nsw.gov.au</a> .
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 <a href="http://www.ipart.nsw.gov.au">www.ipart.nsw.gov.au</a> .
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 <a href="http://www.planning.nsw.gov.au">www.planning.nsw.gov.au</a>
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 <i>Local Government Act</i> 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 <i>Election Funding, Expenditure and Disclosures Act 1981</i> on participation by candidates. See <a href="http://www.parliament.nsw.gov.au/electoral matters">http://www.parliament.nsw.gov.au/electoral matters</a>
Other reviews			Reviews of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> and the <i>Residential Parks Act 1998</i> 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](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><b>Submission 98 – Local Government and Shires Associations of NSW</b></p> <ol style="list-style-type: none"> <li>1. Seek to give clear expression of the purpose, status, models and functions of 21<sup>st</sup> century Local Government</li> <li>2. Seek to maximise council autonomy</li> <li>3. Equip councils to be the leaders, identity and place makers, and service providers their communities want them to be</li> <li>4. Avoid unnecessary prescription and/or regulation of councils and the communities they serve</li> </ol> <p><b>Submission 24 - Warringah Council</b></p> <ol style="list-style-type: none"> <li>1. Sustainability both present and future focussed.</li> <li>2. Acting in the public interest considerations</li> <li>3. Democratic representation</li> <li>4. Good governance of and by local government</li> <li>5. Establishing and maintaining partnerships with other bodies</li> </ol>	<p><b>Submission 29 - Shoalhaven City Council</b></p> <ol style="list-style-type: none"> <li>1. Good Governance – ethics, transparency, accountability</li> <li>2. Sustainability – financial, economic, quality of life, environment</li> <li>3. Community engagement – involve residents and ratepayers and other relevant stakeholders</li> <li>4. Social justice – access and equity in services and policy</li> <li>5. Customer/stakeholder focus</li> </ol> <p><b>Submission 71 – Cowra Council</b></p> <ol style="list-style-type: none"> <li>1. Provide flexibility to Councils</li> <li>2. Reduce and streamline compliance whilst retaining accountability</li> <li>3. Clarify responsibilities to provide certainty</li> <li>4. Autonomy to provide increased service levels</li> <li>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</li> </ol>
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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"> <li>• Public land</li> <li>• Acquisition of land</li> <li>• Tendering</li> <li>• Approvals</li> <li>• Orders</li> <li>• Councillor remuneration – Local Government Remuneration Tribunal</li> <li>• Expenses and facilities</li> <li>• Elections</li> <li>• Council Staffing</li> </ul>	<ul style="list-style-type: none"> <li>• Public Private Partnerships and formation of corporations</li> <li>• Conduct</li> <li>• Revenue</li> <li>• Fees</li> <li>• Loans</li> <li>• Audit and risk management</li> <li>• Enforcement</li> <li>• Alcohol free zones and alcohol prohibited zones</li> <li>• Water management</li> </ul>
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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](mailto: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.

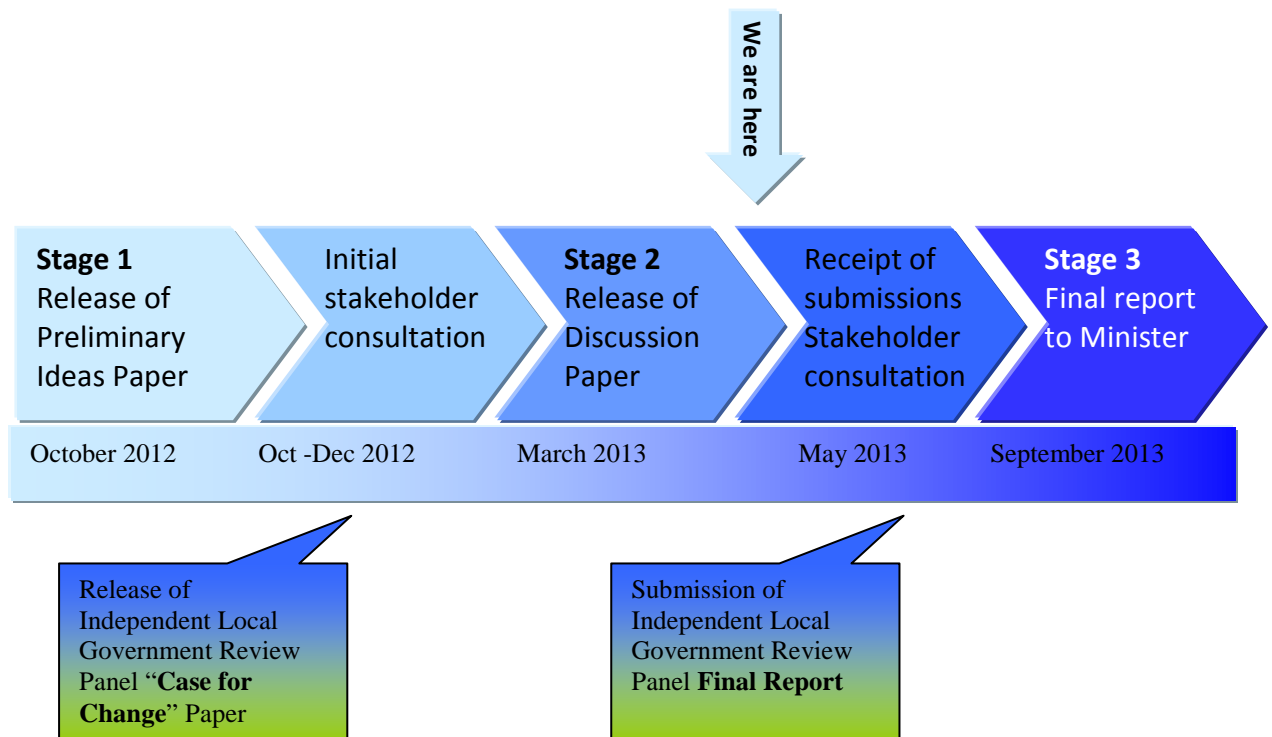
**All submissions will be made publicly available.** If you do not want any part of the submission or your personal details released, because of copyright or other cogent reasons, please indicate this clearly in your submission together with an explanation.

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](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](http://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](http://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><b>Submission 98 – Local Government and Shires Associations of NSW</b></p> <ol style="list-style-type: none"> <li>5. Seek to give clear expression of the purpose, status, models and functions of 21<sup>st</sup> century Local Government</li> <li>6. Seek to maximise council autonomy</li> <li>7. Equip councils to be the leaders, identity and place makers, and service providers their communities want them to be</li> <li>8. Avoid unnecessary prescription and/or regulation of councils and the communities they serve</li> </ol>	<p><b>Submission 29 - Shoalhaven City Council</b></p> <ol style="list-style-type: none"> <li>6. Good Governance – ethics, transparency, accountability</li> <li>7. Sustainability – financial, economic, quality of life, environment</li> <li>8. Community engagement – involve residences and ratepayers and other relevant stakeholders</li> <li>9. Social justice – access and equity in services and policy</li> <li>10. Customer/stakeholder focus</li> </ol>	<p><b>Submission 24- Warringah Council</b></p> <ol style="list-style-type: none"> <li>6. Sustainability both present and future focused.</li> <li>7. Acting in the public interest considerations</li> <li>8. Democratic representation</li> <li>9. Good governance of and by local government</li> <li>10. Establishing and maintaining partnerships with other bodies</li> </ol>	<p><b>Submission 99 – Gosford City Council</b></p> <ol style="list-style-type: none"> <li>1. Be transparent, accountable, responsive, proactive and always act in the public interest</li> <li>2. Practice good governance</li> <li>3. Protect the environment though sustainable and environmentally sound decision making</li> <li>4. Strive to improve the quality of life for the residents of their Local Government Area</li> <li>5. Use resources effectively and efficiently to provide the best possible services to the community</li> </ol>
<p><b>Submission 100 - Penrith City Council</b></p> <ol style="list-style-type: none"> <li>1. Autonomy and accountability</li> <li>2. Clear leadership and responsibility</li> <li>3. Efficient and effective management and governance</li> <li>4. Intelligible, innovative and progressive system of government</li> <li>5. Responsiveness to the evolving needs of the community</li> </ol>	<p><b>Submission 70 – The Hills Shire Council</b></p> <ol style="list-style-type: none"> <li>1. Solid foundations for Councillors, General Managers, framework of Local Government and oversight of services</li> <li>2. Promote ethical, transparent and accountable Local Government</li> <li>3. Enabling and outcome based legislation</li> <li>4. Contemporary and progressive legislation</li> </ol>	<p><b>Submission 53 – Queanbeyan City Council</b></p> <ol style="list-style-type: none"> <li>1. Good governance and effective &amp; efficient management</li> <li>2. Clear leadership, accountability and transparency</li> <li>3. Being abreast of technology and its effective use</li> <li>4. Articulating direction of the community</li> <li>5. Responsiveness to changing public needs</li> </ol>	<p><b>Submission 71 – Cowra Council</b></p> <ol style="list-style-type: none"> <li>1. Provide flexibility to Councils</li> <li>2. Reduce and streamline compliance whilst retaining accountability</li> <li>3. Clarify responsibilities to provide certainty</li> <li>4. Autonomy to provide increased service levels</li> <li>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</li> </ol>
<p><b>Submission 35 – Manly Council</b></p> <p>Local government is and shall continue to be:</p> <ol style="list-style-type: none"> <li>1. locally orientated, democratic and consensus orientated</li> <li>2. an elected (...) sphere of representative government, with effective representation at local level</li> <li>3. 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</li> <li>4. Each local council should have administrative as well as legislative functions</li> <li>5. The powers, authorities, duties and functions of council shall not be altered or changed except after due consultation with local government</li> </ol>	<p><b>Submission 5 – Tenterfield Shire Council</b></p> <p>Enshrine sense of community belonging together</p> <ol style="list-style-type: none"> <li>1. Self-determination and autonomy</li> <li>2. Diversity of structures, of decision-making processes, of services and staffing. Participatory democracy</li> <li>3. Interconnectedness within the Council and Shire</li> <li>4. Lead councils and shires firmly into the E-Technological era</li> <li>5. Principles of good governance – transparency and accountability</li> </ol>	<p><b>Submission 40 – Kiama Council</b></p> <ol style="list-style-type: none"> <li>1. Transparency of process and decision making</li> <li>2. Facilitates and encourages local participation and input</li> <li>3. Empowers councils to serve their communities as community identified in their Community Strategic Plan</li> <li>4. 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</li> <li>5. Provides statutory framework to support local government functions</li> </ol>	<p><b>Submission 30 – Lake Macquarie City Council</b></p> <ol style="list-style-type: none"> <li>1. Open Government – Integrated Planning and Reporting Framework should be the ultimate basis for the Act.</li> <li>2. Accountability and transparency – the role of IPART should be reviewed and potentially strengthened</li> <li>3. Flexibility – The Act should have more flexible provisions that provide scope to recognise the needs of each particular community</li> <li>4. Enabling and clearly define responsibilities and powers</li> </ol>

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

**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