



NSW Government
Response
to the recommendations of

Report No.19 of General
Purpose Standing
Committee No.5

*“Local Government
Amalgamations”*

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'Local Government Amalgamations'

Proposed NSW Government Response to Report Recommendations

Introduction

The NSW Government has, through the Local Government Structural Reform Program, concentrated on many of the matters raised by the Report's recommendations. The remaining recommendations either duplicate existing processes or are not considered cost effective.

The NSW Government has allocated over \$2 million to the Structural Reform Program over the next two years. The Department of Local Government is managing and resourcing Regional Reviews as part of the Program.

The proposed Government response to each of the report's recommendations is set out below.



Tony Kelly
Minister for Local Government

Recommendation 1

That a formal process be established whereby all State Government policy and legislation proposals are assessed for their financial impact on local government.

This matter was considered in a Private Member's Bill in 2003, which did not proceed. Nevertheless, the Department of Local Government (DLG) has provided, and will continue to provide, advice to other State Government agencies regarding the financial impact of policy and legislation on local government as requested.

One current example is advice to the Department of Infrastructure, Planning and Natural Resources regarding the potential impacts, including financial, for local government due to proposed changes to the Building Code of Australia relating to access for people with disabilities. In addition, DLG continues to provide advice to the Minister for Local Government on the financial implications of proposed State Government policy and legislation through the formal Cabinet Minute process.

Recommendation 2

That the State Government, as a matter of urgency, review the rating and rate pegging systems in partnership with the Local Government and Shires Associations of NSW.

The *Local Government Act 1993* provides for variation of general income (section 506), variation of domestic waste management service charge (section 507) and for councils to seek Ministerial approval for a special variation in general income in regard to an increase in general income under section 508(2) and a variation in the minimum ordinary and/or special rate(s) under sections 548(3)(a) and (b).

Rating has been the subject of a number of reviews in NSW. Most recently, the Local Government Association and the Shires Association of NSW established the Rate Pegging Taskforce in early 2001 to review the current operation of rate pegging in NSW. Following the review, the "Local Government Rate Determination Model" was presented to the Minister for Local Government. The Minister considered the result produced by the LGSA's model in his determination of the 2004/05 rate pegging figure, and has indicated that he will consider the model in future rate pegging determinations.

In addition, the *Local Government Amendment (Council and Employee Security) Act 2004*, which was recently passed by Parliament, allows councils to apply for a series of annual percentage increases above the rate-pegging limit for a period of up to seven years. The Act continues to ensure that councils must apply for these special variations and meet certain guidelines before any variation is approved. Extending the time limit on the variation and providing increasing flexibility provides councils with greater certainty in their financial planning. The Minister for Local Government consulted with both the Local Government Association and the Shires Association of NSW in the development of the Act.

Recommendation 3

That the State Government enter into a funding agreement that provides local government with access to a growing revenue base, and that it determine the most appropriate revenue base and allocation percentage in consultation with the Local Government and Shires Associations. This consultation should include an examination of the Federal Government hypothecating a percentage of GST to local government.

The Commonwealth provides untied financial assistance grants to local government. The level of funding has been declining compared to council assessed needs. It is not the responsibility of the State Government to compensate for under-funding by the Commonwealth.

It should be noted, however, that the NSW Government's current Structural Reform Program aims to provide councils with an improved economic base as well as improved governance and overall performance, efficiency and effectiveness.

Recommendation 4

That the Department of Infrastructure, Planning and Natural Resources and the Department of Local Government conduct a formal study, including a review of current studies, on the costs, benefits and functioning of various methods for determining council planning development decisions, including Independent Hearing and Assessment Panels.

The NSW Government is currently conducting a major review of the planning system in NSW. This review, being undertaken by the Department of Infrastructure, Planning and Natural Resources (DIPNR), provides a strategic focus regarding planning priorities in NSW. Elements of the review include State Environmental Planning Policies, local development, major development and infrastructure, ministerial consent role and section 94 developer contributions. The review of local development includes independent hearing and assessment panels.

Following the Commonwealth Government's 1997 inquiry into small business, which recommended regulatory reform of Australia's planning and development processes, the Development Assessment Forum was established to develop a leading practice model for the assessment of development applications. The aim of the model is to increase the consistency, simplicity and economic benefit of current planning and development systems used across Australia.

The Forum includes representatives from Commonwealth, State/Territory and local governments, the development industry and related professional associations. It provides advice to Local Government and Planning Ministers. The proposed model developed by the Forum includes the establishment of panels at the local or regional level to assess projects not determined by professional staff, and to review staff decisions. The Government is aware that a

number of councils have established Independent Hearing and Assessment Panels, for example, Fairfield and Liverpool.

The proposed model is currently the subject of a national consultation process that includes information sessions, focus groups, surveys and written submissions. A report on the findings from the consultation process is due to be submitted to the Forum by 15 July 2004. Following consideration by the Forum, recommendations will then be made to Local Government and Planning Ministers.

The NSW Government considers that the issues raised in this recommendation are being addressed by these two current reviews.

Recommendation 5

That section 230 of the Local Government Act 1993 be repealed by extending the term of councillor-elected mayors from one to two years.

Section 230 outlines the term of mayors elected by the councillors and mayors elected by the electors. The current provisions provide for a term of one year for mayors elected by the councillors. There is nothing preventing the former mayor being re-elected by the councillors.

There already exists a mechanism for longer mayoral terms that addresses this recommendation. Under section 227(b) of the Act, the mayor of an area may be popularly elected and under section 230(2), a popularly elected mayor may hold office for a period of 4 years. Section 228 further provides that the decision to change the method of mayoral election from that of councillors electing the mayor every 12 months to the mayor being popularly elected every four years, or vice versa, must be approved by referendum.

Nevertheless, the NSW Government will continue to keep this matter under review.

Recommendation 6

That the Local Government Remuneration Tribunal undertake an inquiry into councillor remuneration, including the need and likely impact of remunerating councillors on a full time basis.

Under the *Local Government Act 1993*, sections 235 to 247 provide for the functioning of the Local Government Remuneration Tribunal, while sections 248 to 254 outline the provisions for the payment or provision of fees, expenses and facilities to councillors.

The role of the Local Government Remuneration Tribunal is to determine the categories for councils, maximum and minimum amounts of annual fees to be paid to mayors, councillors and chairpersons of county councils in the various categories. Within this role, the Tribunal undertakes reviews of councillor remuneration on an annual basis. It is understood that the Tribunal will be conducting a review later this year. However, the issue of remuneration of

councillors on a full time basis has been considered by the Tribunal on a number of occasions.

The Tribunal is an independent body that is not subject to the control of the Minister for Local Government. It would therefore be inappropriate for the NSW Government to require the Tribunal to conduct inquiries on specific matters. However, section 243 gives the Tribunal the power to make such inquiries as the Tribunal thinks necessary to fulfil its functions.

Recommendation 7

That the NSW Government review the resourcing and location of the Department of Local Government with a view to enabling it to fulfil its charter.

The Government is committed to ensuring that DLG is appropriately located and resourced to enable it to fulfil its charter and will continue to review the situation to ensure that this remains the case.

Recommendation 8

That the NSW Government investigates options for developing a genuine partnership with Local Government. This would include identifying ways to expand opportunities for regular, regional discussions between State Government agencies and local government.

The NSW Government currently engages in a partnership approach with local government. A significant number of mechanisms are in place to provide opportunities for regular and regional discussions between State Government agencies and local government. Examples include:

- The Minister for Local Government and senior DLG staff meet regularly with representatives of the Local Government Association, the Shires Association and Local Government Managers Australia; and attend various local government forums and conferences.
- The Presidents of the Local Government Association and the Shires Association, along with staff from the Associations, meet with the Director General, Department of Environment and Conservation on a quarterly basis to discuss a range of issues, including relevant resolutions from the Associations' Annual Conferences.
- The second Cultural Accord is a partnership agreement between the Minister for the Arts and the Local Government Association and the Shires Association of NSW.
- The Premier's Department has established Regional Coordination Management Groups (RCMG) comprising senior representatives from State and local government.

The role of DLG includes assisting State Government agencies to work effectively with local government. DLG continues to identify opportunities for regular dialogue, including at a regional level.

It is considered that existing mechanisms provide a genuine partnership approach involving the NSW Government and local government.

Recommendation 9

That the NSW Government convene a Summit on Local Government in 2004. The key objective of this event would be to clarify the respective roles and responsibilities of local and State Government in NSW. The outcomes of the Summit would inform any future discussions with the Federal Government regarding intergovernmental roles and local government funding. The Summit would also provide a basis for the development of a partnership agreement between the State and local governments.

The NSW *Local Government Act 1993* already provides local government with a clear framework for its roles and responsibilities. The Act recognises the need to provide local councils with the ability to carry out activities appropriate to both the current and future needs of local communities. The Act also recognises the importance of the role of local communities in the operation of local government.

It is this autonomy and responsiveness to local community needs that makes local councils so important to those communities. This recommendation does not recognise the diversity in the range and scale of activities of local councils across NSW.

It is noted that the Committee states in its report 'a Local Government Summit may produce some positive results – at the very least it could give prominence to the challenges facing local government today' (section 4.75). The Structural Reform Program is providing opportunities for local councils to highlight issues and challenges and a mechanism for addressing these. The Committee also noted that the approach taken by DLG has produced some positive outcomes (section 5.15).

Recommendation 10

That for any future structural reform proposals the Department of Local Government reject any proposal affecting boundaries of other councils unless the council making the proposal can demonstrate it has consulted widely with those councils and the affected residents prior to making the submission.

DLG encourages councils to consult widely with their communities and other councils in the development of structural reform proposals. Section 263 of the *Local Government Act 1993* provides a framework for the inclusion of resident and ratepayer views in proposals and the demonstration of how various communities of interest or diverse views are accommodated in the proposed structure.

In addition, the Regional Review process allows for extensive consultation and encourages input from a wide range of stakeholders. Consultation has involved wide-ranging discussions with councils, local government and shires associations, community groups, unions, individuals and government agencies. If a proposal is referred to the Local Government Boundaries Commission, sections 218F (3) and (4) of the *Local Government Act 1993* require the Commission to undertake further consultation, including a public hearing and written submissions, in the examination of a proposal.

The Government considers that there are adequate consultation mechanisms regarding affected councils and residents within the existing provisions of the *Local Government Act 1993*. Extensive consultation is also provided by the Local Government Boundaries Commission in the event that a proposal is referred to it for examination.

Recommendation 11

That future regional reviews provide greater scope for more inclusive community consultation by lengthening the time allocated to the consultation process and by holding meetings at times that are conducive to greater participation such as outside of business hours and on the weekends.

The Regional Reviews are undertaken by independent facilitators. The consultation processes used are a matter for the Facilitator to determine. Different consultation processes may be appropriate for different towns and areas. Facilitators have sought the advice of local councils concerning the number and location of public meetings. The large numbers of people who have attended public meetings indicates that the timing of these has been appropriate.

The consultation processes used in the Regional Reviews conducted to date have varied. For example, in regard to the Albury Regional Review, all advertised public meetings were held in the evening. Listening posts were also set up in regional shopping centres for those who felt uncomfortable expressing their views in a public meeting. Meetings were also held with community groups who requested meeting at a particular time. The Facilitator also made himself available to take talk back calls on local radio.

In regard to holding meetings on weekends, this would conflict with sporting commitments. Such commitments are very important to communities in rural and regional areas where there is a high level of participation.

In regard to the length of time allocated to the consultation process, again this is a matter for the Facilitator to determine. Facilitators have stayed and listened as long as the meeting felt necessary. In most cases, two hours for each meeting has proved sufficient but in several cases, meetings have gone longer.

Recommendation 12

That the reports of regional reviews indicate the extent of the consultation process by providing details of the meetings held including the times, numbers of

those present and a transcript of evidence given at public meetings, and the number and details of submissions received.

It is considered that the inclusion of the timing of meetings and the numbers of those present in the report of regional reviews is reasonable. The inclusion of transcripts of public meetings would be extremely resource intensive and costly. It is not clear from the report or the recommendation what details about submissions are expected to be included in a regional review report.

Recommendation 13

That the Department of Local Government report on the recommendations for structural reform, other than those involving boundary changes, that it has received during the current reform process. The report should detail the action it has or will take in response to the recommendations.

The Structural Reform Program has encouraged local councils and communities to identify possible reform options. This strategy is a clear recognition that 'one size does not fit all' and that local people are best placed to provide advice about options for their area. Where reform options have been identified by councils, communities and others, these are considered within the Regional Review process.

The Regional Review facilitators consider all suggestions put forward as part of the consultation process. To date, the Regional Reviews have proposed boundary changes, and/or amalgamation. However, if a review was to recommend another option, it would be considered by the Minister.

Recommendation 14

That all amalgamation proposals and any boundary alteration proposals that involve a ten per cent or greater variation in either population, area or rate-base arising from the current structural reform program are referred to the Boundaries Commission for public inquiry.

Under the *Local Government Act 1993* the Local Government Boundaries Commission is required to conduct an inquiry open to the public regarding the amalgamation of areas. The Act also provides that the Boundaries Commission may be required to conduct an inquiry regarding a boundary alteration if directed to do so by the Minister.

The implementation of this recommendation would be an unreasonable cost burden given there are other consultation mechanisms available.

Recommendation 15

That each major recommendation from regional reviews be considered by a consultation process, which could include a polling technique, that involves a representative and spatial sample from the residents of the areas concerned. That following the consultation process, a postal ballot of all residents should be conducted and the support of a majority of a council's residents be required for that council to continue as part of that proposal.

That the State Government fund the cost of this process.

As mentioned in response to other recommendations, there are a number of consultations already underway as part of Regional Review and Boundaries Commission processes. While the Committee states 'it does not believe that a traditional poll by itself is the best method...(and favours) the use of a more comprehensive consultation and engagement method to consider each proposal that arises from the current regional reviews' (section 5.58), this is not evidenced by Recommendation 15. Postal ballots have a relatively low response rate, are costly to conduct and are not considered an accurate measure of community views.

In view of this, implementing this recommendation is not considered reliable or cost-effective.

Recommendation 16

That for each new council being proposed by the regional reviews a steering committee be established and be comprised of a representative of the Department of Local Government, and two councillors, the General Manager and a minimum of two residents from each of the councils involved in the proposal.

That the steering committee develop the charter and proclamation for the new council and specify the new council's governance structure and where its resources will be located.

That the information produced by the steering committee then be used in the community consultation process.

The implementation of such a process would add an additional, and unnecessary, bureaucratic arrangement.

Section 8 of the *Local Government Act 1993* clearly outlines the council's charter. The proclamation for each new local government area that has been created as part of the current reform process sets out interim governance arrangements, for example the appointment of an administrator until the declaration of the first election and initial governance arrangements such as the number of councillors, ward structure and the election of mayor.

Following the first election, governance arrangements are then a matter for the new council to determine within the relevant sections of the *Local Government Act 1993*. The extent to which the community is involved in this process is a matter for council determination.

Recommendation 17

That any new council created via the current reform process should adopt a new name that reflects the region or the shared community of interest.

The NSW Government supports this recommendation. DLG recently arranged for the newly proclaimed Peel Regional Council to be changed to the Tamworth Regional Council following representations from the local community. The department will continue to do this where there is support from the community.

Recommendation 18

That the State Government give immediate priority to resolving its position regarding concerns raised about the Local Government (Employment Protection) Act, in order to remove any uncertainty well before the March 2004 council elections.

The certainty sought by this recommendation is provided by the *Local Government Amendment (Council and Employee Security) Act 2004*, which was introduced into Parliament prior to the local government elections.

The Act contains provisions to extend the employment protection measures conferred in the *Local Government Amendment (Employment Protection) Act 2003* by extending the time limit that applies to the lateral transfer of non-senior staff from 12 months to three years; extending the employment protections to non-transferred non-senior council staff as well as transferred non-senior council staff; preventing non-senior council staff members from being based, without their approval, an unreasonable distance from the depot, office or other place of work at or from which they were based immediately prior to the transfer; and maintain, as far as reasonably practicable, core numbers of permanent staff employed under an award wage or other industrial instrument that were based in rural centres, immediately before the constitution of the new Area.

Recommendation 19

That each new council that is created as part of the current reform process should have its own specific charter and have its agreed governance details included in its proclamation.

Refer to response provided for Recommendation 16.

Recommendation 20

That the Department of Local Government provide funding for an award which recognises effective and innovative cross council cooperation. The award would be administered by a panel convened by the Local Government and Shires Associations.

There are a number of existing mechanisms at both the State and national level that seek to recognise effective and innovative council endeavour, including collaboration. For example the National Awards for Innovation in Local Government, administered by the National Office of Local Government, include an award category for integrated and regional planning by local councils.

The Department of Local Government does not have the capacity within current budget resources to fund or administer an additional award program.

Recommendation 21

That the Department of Local Government investigate the feasibility and cost of applying the model developed by the Institute of Rural Affairs for determining local government boundaries across NSW.

The Institute of Rural Affairs model is one of the resources available to councils, communities, Regional Review facilitators and the Local Government Boundaries Commission. However, it is not considered appropriate within the framework of the Structural Reform Program to apply a single model across NSW. The framework encourages local councils and communities to identify options for structural reform that best suits their needs. It is unlikely that a single model will do this. This recommendation contradicts the President of the Shires Association who, according to the Committee's report, was "strongly of the view that any redrawing of local government should be left to local government itself." (section 6.25).