



LEGISLATIVE COUNCIL

PUBLIC ACCOUNTABILITY COMMITTEE

# Integrity, efficacy and value for money of NSW Government grant programs

## First report



Report 8

March 2021

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Public Accountability Committee

**Integrity, efficacy and value  
for money of NSW  
Government grant programs**

First Report

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## Terms of reference

1. That the Public Accountability Committee inquire into and report on the integrity, efficacy and value for money of NSW Government grant programs, and in particular:
  - (a) the range and availability of funding programs, including but not limited to:
    - (i) discretionary grants funds such as the Premier's Discretionary Fund and the Deputy Premier's Miscellaneous Grants,
    - (ii) local government funding such as the Stronger Communities Fund and Stronger Country Communities Fund,
    - (iii) arts funding such as the Regional Cultural Fund,
    - (iv) sports funding such as the Greater Sydney Sports Facility Fund and the Regional Sports Infrastructure Fund,
    - (v) Jobs for NSW funding, including the review into Jobs for NSW,
  - (b) the manner in which grants are determined, including:
    - (i) the oversight of funding determinations,
    - (ii) the transparency of decision making under grants schemes,
    - (iii) the independence of the assessment of projects,
    - (iv) the role of Members of Parliament in proposing projects for funding,
    - (v) the scope of Ministers' discretion in determining which projects are approved,
  - (c) measures necessary to ensure the integrity of grants schemes and public confidence in the allocation of public money, and
  - (d) any other related matter.
2. That the committee table a first report by 31 March 2021 and a final report by 29 July 2021.<sup>1</sup>

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<sup>1</sup> The original reporting date was 31 March 2021 (*Minutes*, NSW Legislative Council, 4 August 2020, pp 1113-1114). The reporting date was later extended to 29 July 2021 with a first report to be tabled by 31 March 2021 (*Minutes*, NSW Legislative Council, 16 February 2021, p 1908).

## Committee details

### Committee members

<b>Mr David Shoebridge MLC</b>	The Greens	<i>Chair</i>
<b>The Hon Robert Borsak MLC</b>	Shooters, Fishers and Farmers Party	<i>Deputy Chair</i>
<b>The Hon John Graham MLC</b>	Australian Labor Party	
<b>The Hon Courtney Houssos MLC</b>	Australian Labor Party	
<b>The Hon Trevor Khan MLC</b>	The Nationals	
<b>The Hon Matthew Mason-Cox MLC</b>	Liberal Party	
<b>The Hon Natalie Ward MLC</b>	Liberal Party	

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## Chair's foreword

The Stronger Communities Fund tied grants round was an alarming example of the lack of transparency and accountability in NSW Government grant programs. The fund was originally established to assist councils created from the NSW Government's failed council amalgamations, but morphed into a brazen pork-barrel scheme. Ultimately the Coalition designed a scheme with so few checks and balances that \$252 million of public money was handed out on a purely political basis to sort out the Coalition's political problems, to gain an advantage in the 2019 state election and to punish any council that had objected to being forcibly merged.

Astoundingly there was not even an attempt to assess whether or not these projects, or this scheme as a whole, provided an overall benefit to the public. In the absence of formal applications, merit assessments or any public notice this is hardly surprising. It was never meant to benefit the public, it was always about the politics, and if certain useful projects were funded along the way then that was by accident not by design.

The problems with the design and administration of the Stronger Communities Fund run much deeper than allocating money to favour Coalition electorates. In addition to providing funding to Coalition councils that were in favour with the government, the funding round punished councils that had objected to forced merger proposals. It was also designed to create a pool of ready cash to help sort out an ongoing legal dispute caused by the government's much criticised forced amalgamations policy.

The committee found that \$90 million was given to Hornsby Shire Council and \$16 million to Parramatta City Council to partially resolve a legal dispute between these councils. One of the most remarkable pieces of evidence before the committee was how that \$90 million was paid to Hornsby Council within 72 hours, without any application form from the council and after just a couple of phone calls and emails.

This was all a deliberate plan that was approved by the Premier, the Deputy Premier and former Minister for Local Government. In the middle of 2018, nine months before the state election, the fund guidelines were revised to open it up to make it almost entirely discretionary, with criteria that were deliberately vague and secret. There was no application and no assessment process. What purported to be eligibility criteria were read to green light a practice where the act of identifying a project also amounted to approving the project.

The lack of sufficient documentation, particularly regarding decision-making, was also of serious concern. The committee and the Legislative Council expended considerable effort throughout 2020 seeking details about how and why the tied grants round existed. The significant gaps in evidence and records speak to the maladministration of the fund and how significantly it contravened appropriate grant processes.

No formal funding briefs were created which detailed who approved projects and the basis on which they did so. Working advice notes created in the Office of the Premier were destroyed. In the Deputy Premier's Office, no records similar to the working advice notes were even created and the Deputy Premier's signature on the revised guidelines was not dated.

No witness to the inquiry would take responsibility for approving the various projects under the tied grants round. However, following evidence from the Office of Local Government and from documents returned under standing order 52, it became apparent that these projects were approved by the Premier, Deputy Premier and then Minister for Local Government. Their involvement raises serious questions about the integrity of the process given they were not the designated decision-makers.

The Stronger Communities Fund is just one example of how NSW Government grant processes lack transparency, accountability and oversight. Not only is the vast array of grant programs wasteful and inefficient, but grant programs are also currently open to abuse. Assessment processes and the role of Ministerial discretion in decisions lack transparency. Government MPs have input into identification and even assessment of projects while non-government MPs are often excluded.

The committee came to the conclusion that the current grants system is broken and in need of a fundamental overhaul. The committee therefore recommends that the NSW Government move away from grants as the primary means by which it funds local government and move towards multi-year funding through a public formula that is linked to existing local government strategic planning processes and documents. The committee also made a number of recommendations to improve the efficiency and transparency of current grant processes, recognising that some funding by grants will continue.

The lack of accountability and transparency in grant processes is symptomatic of a wider problem with oversight of NSW Government budgeting and spending. In particular, changes to how funding is represented in annual appropriation bills have reduced the ability of the Legislative Council to adequately review the budget and government spending. The committee has therefore further recommended the Parliament examine this wider issue through a Joint Select Committee.

The committee will continue its important work examining grant programs and now turns its attention to bushfire relief grants and allegations that a further \$177 million was allocated improperly. This issue, along with grant funding to arts organisations, will be examined in the committee's next report later this year.

Finally, on behalf of the committee, I'd like to express my thanks to all who have participated in the inquiry so far. My thanks also go to my committee colleagues and to the secretariat, as well as the procedure team who supported the Legislative Council obtaining documents which were particularly important to the inquiry.



Mr David Shoebridge MLC

**Committee Chair**

## Findings

- Finding 1** 43  
That the Stronger Communities Fund tied grants round was a clear abuse of the grants process. It was an improper allocation of public money and falls well short of principles of proper grants administration and public expectations.
- Finding 2** 44  
That, of the \$252 million allocated in the Stronger Communities Fund tied grants round, 95 per cent, which is a total of \$241 million, was allocated to councils in Coalition-held or marginal electorates.
- Finding 3** 44  
That the grant of \$90 million to Hornsby Shire Council went against the original intent of the Stronger Communities Fund, was made without any due process or merit assessment, and was a misuse of public money by the NSW Government for a political purpose unrelated to the objects of the grants scheme.
- Finding 4** 45  
That the revised guidelines for the Stronger Communities Fund tied grants round were ambiguous and did not identify with enough specificity the designated decision-maker or how projects would be identified or approved.
- Finding 5** 45  
That the guidelines for the Stronger Communities Fund tied grants round were deliberately devised to accommodate the pork-barrelling scheme in order to:
- partially resolve certain legal disputes involving Hornsby Shire Council and Parramatta City Council
  - win favour with the public in Coalition and marginal seats ahead of the 2019 state election
  - punish local councils that had objected to forced amalgamation proposals.
- Finding 6** 45  
That the Office of Local Government failed to publish the revised guidelines for the Stronger Communities Fund tied grants round.
- Finding 7** 70  
That the working advice notes created in the Office of the Premier were used as formal funding briefs by which the Premier of New South Wales, the Hon Gladys Berejiklian MP, approved projects for the Stronger Communities Fund tied grants round.
- Finding 8** 70  
That staff in the Office of the Premier breached the *State Records Act 1998* by destroying working advice notes concerning the Stronger Communities Fund tied grants round.

- Finding 9** 71  
That the Premier of New South Wales, the Hon Gladys Berejiklian MP and the Deputy Premier of New South Wales, the Hon John Barilaro MP approved projects to be funded under the Stronger Communities Fund tied grants round and directed the Office of Local Government to make the payments.
- Finding 10** 72  
That the Office of the Deputy Premier failed to comply with the basic rules of good governance by keeping no records detailing the basis on which the Deputy Premier of New South Wales, the Hon John Barilaro MP determined to allocate \$61.3 million of public money under the Stronger Community Fund tied grants round.
- Finding 11** 72  
That the Office of Local Government had no process whereby it assessed potential projects for funding under the Stronger Communities Fund tied grants round, nor did any other agency.
- Finding 12** 72  
That the agency administering the fund, the Office of Local Government, did not hold or record any conflicts of interest in relation to these grants. No evidence of any conflict of interest declarations was presented, including in the Offices of the Premier and the Deputy Premier.
- Finding 13** 94  
That it is unacceptable for large regional cities, such as Wollongong and Newcastle, to be excluded when complementary grants programs are designed for both metropolitan and regional areas, such as the Greater Sydney Sports Facility Fund and Regional Sports Infrastructure Fund.

## Recommendations

### Recommendation 1

24

That the NSW Government review and update the Good Practice Guide to Grants Administration and related circular to ensure it aligns with current best practice including:

- minimum requirements including publication of guidelines, clear chains of authority and decision-making and adequate record keeping
- guidelines around the role of members of parliament and discretion of ministers and other decision-makers.

### Recommendation 2

24

That the NSW Government ensure that key requirements of the Good Practice Guide to Grants Administration are enforceable.

### Recommendation 3

24

That the NSW Government create and maintain a central website, similar to the Australian Government's Grant Connect website for:

- all grant application information, including guidelines, objectives and eligibility
- an annual calendar with open and closing dates along with projected times of project announcements.

### Recommendation 4

25

That the NSW Government:

- increase the powers and remit of the Auditor-General of New South Wales to include 'follow the dollar' powers, consistent with other Australian State and Territory jurisdictions
- enable the Auditor-General of New South Wales to conduct more regular performance audits on the design and guidelines of government grant programs.

### Recommendation 5

46

That the NSW Government ensure all grant programs have, as an absolute minimum, the following legally binding and mandatory elements:

- a designated decision-maker
- eligibility criteria
- a process for identifying and assessing proposed projects against those criteria
- program guidelines that are clear, detailed and publicly available.

### Recommendation 6

70

That the Board of the State Records and Archives Authority reconsider its decision not to pursue further action against the Premier of New South Wales, the Hon Gladys Berejiklian MP, and her office, in light of its findings that the Office of the Premier breached the *State Records Act 1998* by destroying working advice notes regarding the Stronger Communities Fund tied grants round.

- Recommendation 7** **73**  
 That the Legislative Council refer its concerns regarding the inappropriate design and maladministration of the Stronger Communities Fund tied grants round to the Audit Office of NSW, along with this report and committee transcripts of evidence for investigation.
- Recommendation 8** **73**  
 That the Legislative Council refer its concerns regarding the inappropriate design and maladministration of the Stronger Communities Fund tied grants round to the Independent Commission Against Corruption, along with this report and committee transcripts of evidence for investigation.
- Recommendation 9** **74**  
 That the Legislative Council send a message to the Legislative Assembly to establish a Joint Select Committee to inquire into and report on the NSW budget process and parliamentary oversight.
- Recommendation 10** **93**  
 That the NSW Government, in close consultation with Local Government NSW, overhaul its current model of grant funding to local councils to move towards providing the bulk of its funding through a funding formula that:
- is linked to local councils' existing strategic planning documents and priorities
  - acknowledges the additional costs and needs of regional and remote councils
  - is predictable and provides multi-year funding commitments
  - is regularly and publicly reviewed to ensure it meets the needs of the sector.
- Recommendation 11** **93**  
 That the NSW Government consider using staged application processes for large grants so that applicants submit an initial expression of interest and are shortlisted to progress through to a full application.
- Recommendation 12** **93**  
 That the NSW Government ensure that no local government grant funding announcement is made before the recipient has been informed and accepts.
- Recommendation 13** **94**  
 That the NSW Government review and standardise eligibility classifications across grant programs, including investigating whether to include a third category of 'gateway city' in its classification of regions.
- Recommendation 14** **94**  
 That the Department of Premier and Cabinet table half-yearly reports to the Legislative Council on all current grant processes, including:
- guidelines for open and upcoming grant programs and any revisions to these guidelines
  - total amount available for the round and approximate amounts available to each applicant
  - updates on amounts paid for each project for the last quarter.
- Further, that the Department of Premier and Cabinet publish this information on an online dashboard and update it regularly.

**Recommendation 15**

**95**

That the NSW Government ensures the Office of Local Government is audited for each grant funding round it administers, including checks to ensure whether the Office has complied with the relevant guidelines, ensured programs are subject to probity audits, and kept accurate and sufficient records.

## Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 3 July 2020.

The committee has so far received 115 submissions and three supplementary submissions.

The committee has so far held seven public hearings at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.



# Chapter 1 Background

This chapter outlines the background to the inquiry and procedural developments, in particular how documents received by the Legislative Council under standing order 52 informed the committee throughout the inquiry. This chapter also provides an overview of grants administered by the Department of Premier and Cabinet and the Department of Regional NSW.

## Background to the inquiry

- 1.1 This inquiry was initially established to examine grant funds including the Stronger Communities Fund tied grants round, evidence of which first came to light in April 2020 as part of the Portfolio Committee No. 7 – Planning and Environment Budget Estimates 2019-2020 inquiry.<sup>2</sup>
- 1.2 In May 2020 media reports revealed that around \$250 million had been allocated to certain local councils under the tied grants round. An overwhelming majority of the funding was revealed to have been given to local councils in Coalition-held State electorates in the lead-up to the 2019 State government election, leading to allegations of pork-barrelling.<sup>3</sup>
- 1.3 The Public Accountability Committee subsequently adopted terms of reference to inquire into the Stronger Communities Fund and the administration and oversight of a range of NSW Government grant programs.
- 1.4 This report focuses on evidence received regarding the Stronger Communities Fund and local government grants. The committee is continuing to look into other NSW Government grant programs and will release a second report covering these issues later in the year.

## Background to the Stronger Communities Fund

- 1.5 The Stronger Communities Fund was originally established to support merged local councils following the NSW Government's council amalgamation process in 2016 as part of its 'Fit for the Future' reform program.
- 1.6 In the first round, newly-amalgamated local councils were provided with \$5 million for each legacy council that made up the new council. An additional \$10 million was available to each new council under the New Council Implementation Fund for administration costs.
- 1.7 In June 2018, revised guidelines were approved for a second round of the fund, known as the 'tied grants round'. Under this round, \$252 million was provided to a number of local councils that had either undergone a council merger or had been the subject of a proposed merger.
- 1.8 The tied grants round was the focus of this inquiry and is discussed in detail in chapters 3 and 4.

<sup>2</sup> Answers to questions on notice, Portfolio Committee No. 7 – Planning and Environment, Budget Estimates 2019-2020, Attachments 1-33, 8 April 2020.

<sup>3</sup> *News*, 9News, 18 May 2020, 6.00 pm.

## NSW Government grant programs

- 1.9 While the Stronger Communities Fund was the focus of this inquiry, it is just one of a vast array of grant programs administered by the NSW Government. These grants are designed and administered individually across departments according to different agency priorities and program guidelines.
- 1.10 The committee received evidence on grants administered or supported by three departments - the Department of Premier and Cabinet, the Department of Regional NSW and the Office of Local Government, in the Department of Planning, Industry and Environment.
- 1.11 The Department of Premier and Cabinet supports a large number of grant programs through Aboriginal Affairs NSW, Create NSW and Screen NSW. It is also responsible for the Heritage NSW Grants Program which administers a number of competitive and non-contestable grants, as well as the Premier's Discretionary Fund.<sup>4</sup>
- 1.12 The Department of Regional NSW administers a number of different grant programs under the Regional Growth Fund. This was established in 2017 and is an overarching suite of nine funding programs underpinned by the NSW Regional Development Framework, 20-Year Economic Vision for Regional NSW, and 38 separate Regional Economic Development Strategies.
- 1.13 The Regional Growth Fund is made up of the following programs:
- Stronger Country Communities Fund
  - Regional Sports Infrastructure Fund
  - Resources for Regions program
  - Regional Cultural Fund
  - Regional Communities Development Fund
  - Connecting Country Communities Fund
  - Growing Local Economies
  - Drought Stimulus Package
  - Regional Growth Environment and Tourism Fund.<sup>5</sup>

### Oversight of NSW Government grant programs

- 1.14 The Auditor-General of NSW and the Independent Commission Against Corruption (ICAC) may investigate grant programs or particular aspects of grant programs according to relevant legislation and general principles of proper grants administration and good governance. The views of the Auditor-General and ICAC are discussed in detail throughout the report.

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<sup>4</sup> Submission 95, Department of Premier and Cabinet.

<sup>5</sup> Submission 80, The Hon John Barilaro MP, Deputy Premier and Minister for Regional NSW, p 1.

### *The Audit Office*

- 1.15** The Audit Office is an independent statutory body which conducts financial and performance audits under the *Public Finance and Audit Act 1983* and *Local Government Act 1993* and examines allegations of serious and substantial waste of public money under the *Public Disclosures Act 1994*. The Auditor-General may also publish special reports and can be requested to perform audit or audit-related services by the Treasurer, a minister, or a member of parliament.<sup>6</sup>
- 1.16** The Audit Office has conducted five performance audits over the past seven years examining particular grants administration processes in detail.

### *The Independent Commission Against Corruption*

- 1.17** ICAC is an independent statutory body which investigates allegations of corrupt conduct under the *Independent Commission Against Corruption Act 1988*. Largely, this involves assessing whether a grant program has been administered according to its legislative framework and guidelines with regard to general principles of good public administration and conventional processes.
- 1.18** For example, the Hon Peter Hall QC, Chief Commissioner, stated that if ICAC were to investigate intervention by a minister in a prescribed grant selection process, it will consider whether the actions complied with accepted conventional processes and if not, investigate why this was the case, including any circumstances that might justify a departure.<sup>7</sup>
- 1.19** ICAC has also established a strategic intelligence unit which undertakes assessments of corruption risk.<sup>8</sup>

## **Procedural developments**

- 1.20** The inquiry so far has been procedurally noteworthy as it has involved significant interaction between the work of the Legislative Council and the committee. Evidence obtained by the committee influenced the work of the House, and vice versa. In addition the committee has also faced resistance from key witnesses to attend and give evidence.
- 1.21** The Stronger Communities Fund was not just a focus of the committee but was a key focus of debate and of orders for papers by the Legislative Council in 2020. Documents relating to the fund were first ordered by the Legislative Council under standing order 52 in June 2020 and the Council continued to pursue related documents throughout the year. This evidence assisted the committee in its inquiry and a number of documents returned under standing order 52 were referred to in hearings and tendered to the committee.
- 1.22** For example, in June 2020, a number of emails from ministerial staff to the Office of Local Government were returned in response to an order for papers. These emails referred to councils to be funded under the tied grants round and detailed how much funding was to be provided

<sup>6</sup> Audit Office of New South Wales, *Annual work program 2020-21* <https://www.audit.nsw.gov.au/annual-work-program-2020-21>.

<sup>7</sup> Evidence, the Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, 16 October 2020, p 4.

<sup>8</sup> Evidence, Mr Hall, 16 October 2020, pp 3-4.

to each council and for which projects. These emails were key to the inquiry and are discussed further in chapter 4.

- 1.23** The committee also faced resistance from the NSW Government in providing witnesses who could speak to the Stronger Communities Fund. The committee initially invited the Department of Premier and Cabinet to appear at a hearing in October but was advised that there was no-one in the Department who could speak to the administration of the fund.
- 1.24** The committee also invited the Premier, the Hon Gladys Berejiklian MP, to attend on two separate occasions but the invitation was declined both times. The former Minister for Local Government, Ms Gabrielle Upton MP also declined to appear. However, the Deputy Premier, the Hon John Barilaro MP appeared at a hearing in February 2021.
- 1.25** The committee therefore called staff and former staff from the offices of the Premier, the Deputy Premier and the former Minister for Local Government to give evidence. Many of these individuals were referred to in the emails returned under standing order 52 (discussed above). The committee also faced resistance regarding the attendance of some of these staffers which was communicated by the Department of Premier and Cabinet. The committee was initially advised that some of these witnesses would not be able to assist the committee. However the committee found their evidence to be relevant and valuable to the inquiry.
- 1.26** For example, in October 2020 the committee heard from a staff member in the Premier's Office that working advice notes concerning the tied grants round had been destroyed. The Legislative Council ordered that these notes be reconstituted from electronic backups and these were then produced to the House in November 2020. The working advice notes contained important evidence and were used to question witnesses at further committee hearings in December and February. The working advice notes are discussed in detail in chapter 4.
- 1.27** The timeline below sets out the significant interplay between the Legislative Council and its committees in obtaining evidence about the Stronger Communities Fund.

**Table 1 Timeline of key Stronger Communities Fund evidence**

<b>Date (2020)</b>	<b>Event</b>
4 March	Portfolio Committee No. 7 Budget Estimates 2019-2020 further hearing into Local Government portfolio. Questions asked to Mr Tim Hurst and the Minister for Local Government about grant to Hunters Hill Council. <sup>9</sup>
8 April	Copies of each funding agreement under tied grants round are provided to Portfolio Committee No. 7 as part of answers to questions on notice from hearing on 4 March.
18 May	First media report on SCF and grant to Hornsby Shire Council. <sup>10</sup>

<sup>9</sup> Evidence, Portfolio Committee No. 7 – Planning and Environment, Budget Estimates 2019-2020, 4 March 2020, pp 64-66.

<sup>10</sup> *News*, 9News, 18 May 2020, 6.00 pm.

3 June	House resolves to order documents related to assessment and approval for determining projects under SCF. <sup>11</sup>
29 June	Documents produced in response to order of the House made on 3 June, including emails from ministerial offices to the Office of Local Government. <sup>12</sup>
3 July	Committee inquiry established.
21 September	Committee hears from Mr Tim Hurst, CEO, Office of Local Government. Mr Hurst could not answer certain questions related to the revised guidelines as they were considered Cabinet-in-confidence.
24 September	Leader of the Government in the Legislative Council censured for failure to produce the signed, written brief approving the amended guidelines or the signed written briefs approving projects to be awarded funds under SCF. <sup>13</sup>  Two briefing notes approving the revised SCF guidelines are then tabled in the Legislative Council. <sup>14</sup>
20 October	Leader of the Government in the Legislative Council held in contempt and suspended from the House for the rest of the sitting day for failure to produce individual project briefs for each project funded under SCF.
22 October	In answers to questions on notice the Office of Local Government indicates who authorised expenditure for each project under SCF tied grants round.
23 October	Committee hears evidence from Premier's Office staffer that working advice notes were destroyed which detailed which projects were recommended for funding.
10 November	The House holds the Leader of the Government in the Legislative Council in contempt for non-production of documents and orders that electronic copies of deleted working advice notes to be reconstituted and produced. <sup>15</sup>
25 November	Reconstituted copies of working advice notes are produced to the House. <sup>16</sup>  (Future inquiry witnesses are questioned on information contained in these documents.)
22 January	State Archives and Records Authority releases report into the legality of destroyed documents under the <i>State Records Act 1998</i> .

<sup>11</sup> *Minutes*, NSW Legislative Council, 3 June 2020, p 1013.

<sup>12</sup> *Minutes*, NSW Legislative Council, 4 August 2020, p 1106.

<sup>13</sup> *Minutes*, NSW Legislative Council, 24 September 2020, pp 1393-1395.

<sup>14</sup> *Minutes*, NSW Legislative Council, 24 September 2020, p 1392.

<sup>15</sup> *Minutes*, NSW Legislative Council, 10 November 2020, pp 1553–1555.

<sup>16</sup> *Minutes*, NSW Legislative Council, 16 February 2021, p 1897.



## Chapter 2 Ensuring integrity of NSW Government grant programs

This chapter explores the principles of good grant administration that ensure accountability and transparency before considering how these principles are practiced in New South Wales according to the NSW Government's Best Practice Guide and overseen by the Auditor-General and Independent Commission Against Corruption.

### The need for transparency and accountability

- 2.1 Inquiry stakeholders agreed that all grant programs should be designed and administered according to basic principles of transparency and accountability. Broadly, this means that decisions are made according to established, public criteria and documented accordingly.
- 2.2 The Independent Commission Against Corruption (ICAC) noted that generally, public money should be spent according to the 'three Es' of public sector administration and decision-making – efficiently, effectively and economically. The Commonwealth Grant Rules and Guidelines has introduced a fourth concept – that money must be managed ethically - and ICAC noted its support for ethics being included as a foundational organising principle of grants administration.<sup>17</sup>
- 2.3 The public has a reasonable expectation that public money will be spent in a way that is visible and justifiable. Transparency and accountability in the administration of grant schemes are expected by the community,<sup>18</sup> and are considered critical to maintaining public confidence in grant schemes and in government.<sup>19</sup>
- 2.4 While all citizens may expect that public money is managed properly, those who apply for grants told the committee that they in particular have a reasonable expectation that their applications will be assessed fairly and promptly as they spend considerable time and resources preparing them.<sup>20</sup>
- 2.5 ICAC noted that principles of transparency, accountability and fairness should be observed in all grant programs as they all involve public money or assets. In addition, there should be a greater focus on these probity principles for high-risk grant schemes, such as those involving complicated arrangements, high values, or where the consequences of poor performance are significant.<sup>21</sup>

<sup>17</sup> Submission 92, Independent Commission Against Corruption, p 4.

<sup>18</sup> Evidence, Cr Khal Asfour, Mayor, City of Canterbury-Bankstown Council, 21 September 2020, p 26.

<sup>19</sup> Submission 20, NSW Council of Social Service (NCOSS), p 3; Submission 8, Coolamon Shire Council, p 1.

<sup>20</sup> Submission 38, Richmond Valley Council, p 2.

<sup>21</sup> Submission 92, Independent Commission Against Corruption, p 13.

## Ensuring transparency and accountability in grant programs

- 2.6** A number of inquiry participants gave their views on how grant programs should be designed and administered in order to distribute money transparently and accountably. Generally, participants agreed that grant programs should contain clear, publicly accessible guidelines and that decisions should be made according to these guidelines.

### Accessible information

- 2.7** One of the most important considerations in ensuring grant programs are transparent and accountable is that information is freely and publicly available. This means information about eligibility and how decisions will be made is available to prospective applicants and information about what decisions were made and why is also publicly available.
- 2.8** According to Mosman Municipal Council, transparent funding allocation requires clear protocols around how grants are assessed and funds distributed, and that this information is easily available to applicants. It also means applicants are given meaningful feedback.<sup>22</sup> Penrith City Council similarly submitted that guidelines, assessment tools and priorities should always be available for review during a grant round and that there should always be meaningful feedback.<sup>23</sup>
- 2.9** Similarly, the NSW Council of Social Services (NCOSS) viewed that information on eligibility and application processes, as well as detailed, written feedback for unsuccessful applicants, is vital.<sup>24</sup>
- 2.10** According to Cr Nuatali Nelmes, Lord Mayor of City of Newcastle, potential grant applicants should be notified of all possible available funds and described this as an 'absolute minimum expectation' for a grant program.<sup>25</sup>

### Grant guidelines

- 2.11** It was a near universal theme in the submissions to the committee that guidelines on how grant programs will be administered should be clear, detailed and public. This means they should include clear information about eligibility and how applications will be assessed and be made available online.
- 2.12** The Hon Peter Hall QC, Chief Commissioner of ICAC, told the committee that principles of good grant administration should be embedded in the overarching legislation and carried through to the guidelines which outline how the program is to operate. Mr Hall stated: 'the legislation should provide the framework that will support and reinforce probity in the process, in particular in the selection and decision-making process'.<sup>26</sup> Mr Hall noted that the program

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<sup>22</sup> Submission 12, Mosman Municipal Council, p 3.

<sup>23</sup> Submission 61, Penrith City Council, p 4.

<sup>24</sup> Submission 20, NSW Council of Social Service (NCOSS), pp 1-3.

<sup>25</sup> Evidence, Cr Nuatali Nelmes, Lord Mayor, City of Newcastle, 27 November 2020, p 7.

<sup>26</sup> Evidence, The Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, 16 October 2020, p 4.

guidelines should then provide for an open and fair process that complies with probity principles.<sup>27</sup>

- 2.13** NCOSS further stated that it is important that grant programs have clear, public eligibility criteria so that potential applicants can assess their eligibility and make informed decisions about whether to apply.<sup>28</sup> According to Federation Council, eligibility should also be fair and not exclude potential applicants arbitrarily.<sup>29</sup>
- 2.14** Mr Hall agreed that grant guidelines should be detailed and eligibility 'defined with some precision or specificity'. In his view, this is important not only for those applying for grants, but for oversight bodies such as the Auditor-General to enable them to review a program's administration.<sup>30</sup> Ms Margaret Crawford, Auditor-General, agreed that clear criteria in grant programs assists the Audit Office in reviewing whether programs have been administered appropriately.<sup>31</sup>
- 2.15** Mr Hall suggested that input into program guidelines and criteria from an external body, such as the Auditor-General, would likely improve grant programs and help to restore public confidence in them.<sup>32</sup>

### **Administration of grant programs**

- 2.16** Grant programs should be designed according to principles of transparency and accountability and then administered according to these principles. At a broad level, stakeholders generally agreed this means applications should be assessed and decisions made according to published guidelines and rules and that clear documentation should record this decision-making.
- 2.17** Local Government NSW submitted that applications should be assessed according to published guidelines and should consider the merits of the intended project as well as the needs of and intended benefits to communities. The assessment and ranking process should be thorough, transparent and subject to probity checks and balances.<sup>33</sup>
- 2.18** According to Ms Crawford, the Auditor-General, in order to ensure transparency and fairness in the assessment of grants, grant program objectives and guidelines should not only be clear but should also be applied consistently.<sup>34</sup> Ms Crawford told the committee that the Audit Office expects that agencies have administered grant programs according to the published guidelines and purpose of that program. This includes complying with eligibility and assessment criteria set out in the guidelines so that what actually happens reflects what was supposed to happen.<sup>35</sup>

<sup>27</sup> Evidence, Mr Hall, 16 October 2020, p 8.

<sup>28</sup> Submission 20, NSW Council of Social Service (NCOSS), pp 1-2.

<sup>29</sup> Submission 49, Federation Council, p 6.

<sup>30</sup> Evidence, Mr Hall, 16 October 2020, p 8.

<sup>31</sup> Evidence, Ms Margaret Crawford, Auditor-General of New South Wales, 16 October 2020, p 34.

<sup>32</sup> Evidence, Mr Hall, 16 October 2020, p 10.

<sup>33</sup> Submission 11, Local Government NSW, pp 4-5.

<sup>34</sup> Evidence, Ms Crawford, 16 October 2020, p 33.

<sup>35</sup> Evidence, Ms Crawford, 16 October 2020, p 34.

- 2.19** Ms Crawford accepted that different grant programs have different administrative arrangements. She agreed that some programs may need to be rolled out more quickly than others. In auditing these programs, Ms Crawford said the Audit Office takes into account 'the proportionate nature of the administrative arrangements ... relative to the intent of the program, the speed with which it needs to be delivered, etc'.<sup>36</sup> However, she stated that documentation and a clear justification for a decision are fundamentally basic standards.<sup>37</sup>
- 2.20** In addition, ICAC submitted that grant programs should involve a process for verifying outcomes to ensure that the funding has been applied to its intended purpose to advance the public interest. Grant recipients should be required to undergo an acquittal process and this documentation should be assessed and verified by government agencies.<sup>38</sup>

### **Decision-making**

- 2.21** Stakeholders noted that the power to determine or approve expenditure of public money through grants is considerable and care should be taken to ensure decisions are made in accordance with the program rules and are clearly documented.
- 2.22** Mr Hall, Chief Commissioner of ICAC, characterised the power of a public official to authorise or direct the use of public money as 'a power of considerable significance'.<sup>39</sup> Mr Hall agreed that a record of an approval, signed and dated by the decision-maker, is a fundamental and non-negotiable element in the allocation of public money through grant programs.<sup>40</sup> Ms Crawford agreed that it is fundamental that each grant scheme has a designated decision-maker.<sup>41</sup>
- 2.23** Ms Claudia Migotto, Assistant Auditor-General, Performance Audit, agreed that it is also usually a reasonably fundamental part of a grants scheme that recommendations are put to a decision-maker who may then choose to follow the recommendation. She noted that some grant programs may take a slightly different approach, such as grants to non-government schools, where the eligibility of a school is set out under legislation and the department applies a funding formula.<sup>42</sup> Ms Migotto agreed that where a funding formula is used, the formula must still be clear and transparent. In this way, she noted, the funding formula acts as the departmental recommendation.<sup>43</sup>

### **Documentation**

- 2.24** Clear documentation recording all parts of the grant assessment project, especially the final decision, is critical for transparency and accountability.

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<sup>36</sup> Evidence, Ms Crawford, 16 October 2020, p 35.

<sup>37</sup> Evidence, Ms Crawford, 16 October 2020, pp 34-35.

<sup>38</sup> Submission 92, Independent Commission Against Corruption, p 16.

<sup>39</sup> Evidence, Mr Hall, 16 October 2020, p 3.

<sup>40</sup> Evidence, Mr Hall, 16 October 2020, pp 8-9.

<sup>41</sup> Evidence, Ms Crawford, 16 October 2020, p 38.

<sup>42</sup> Evidence, Ms Claudia Migotto, Assistant Auditor-General, Performance Audit, Audit Office of New South Wales, 16 October 2020, p 38.

<sup>43</sup> Evidence, Ms Migotto, 16 October 2020, p 38.

- 2.25** Mr Hall stated that both recommendations put to decision makers made from merit assessments and the final decision should be supported with reasons to ensure transparency 'from start to finish'. Mr Hall agreed that it is essential that decisions be recorded and, in particular, he agreed that a signed and dated record of the decision-maker's approval is fundamental to the process.<sup>44</sup>
- 2.26** Ms Crawford told the committee that clear documentation recording the reason for a Minister's decision, whether supportive of a recommendation or not, is fundamental.<sup>45</sup> Ms Migotto confirmed that 'documentation and clear justification is a basic standard that we would be looking for ...'<sup>46</sup>
- 2.27** Ms Migotto noted that the approval environment may differ depending on the structure of the grant.<sup>47</sup> Ms Crawford agreed that some programs may be more flexible in the documentation that is required and noted that administrative arrangements are proportionate and may vary based on factors such as the intent of the program and how quickly it needs to be delivered.<sup>48</sup>
- 2.28** Mr Chris Hanger, Deputy Secretary, Public Works Advisory and Regional Development, Department of Regional NSW agreed that it is best practice that Ministers record decisions and reasons in writing.<sup>49</sup>

### **Penrith City Council recommendations**

- 2.29** Addressing most of the above themes, Penrith City Council made the following recommendations for grants administration:
- guidelines, assessment tools and priorities should always be available for review during a grant round
  - grant assessment should be well-resourced with appropriately trained grant administrators. An independent body should be involved in decision-making
  - assessment should not solely rely on the quality of the application but rather the merit of the application. Projects should be prioritised in line with:
    - the greatest identified need, evidence-based outcomes, alignment with relevant statistical data
    - those projects which are linked or identified with a strategic planning context and are endorsed by the relevant peak organisation
    - generating participation and improving the liveability of an area
    - partnerships that 'value-add' and generate social and economic return on investment
  - decision-making should be documented, transparent and published

<sup>44</sup> Evidence, Mr Hall, 16 October 2020, p 9.

<sup>45</sup> Evidence, Ms Crawford, 16 October 2020, p 34.

<sup>46</sup> Evidence, Ms Migotto, 16 October 2020, pp 34-35.

<sup>47</sup> Evidence, Ms Migotto, 16 October 2020, p 34.

<sup>48</sup> Evidence, Ms Crawford, 16 October 2020, p 35.

<sup>49</sup> Evidence, Mr Chris Hanger, Deputy Secretary, Public Works Advisory and Regional Development, Department of Regional NSW, 16 October 2020, pp 18-19.

- there should always be a meaningful feedback mechanism
- advisory task forces, constituting independent and industry experts, could be established to review grant programs and advise government of recommendations for continuous improvements.<sup>50</sup>

**2.30** A number of local councils that appeared at the hearing in September 2020 were asked to respond to these recommendations. Hornsby Shire Council responded that they generally support these recommendations.<sup>51</sup> The Hills Shire Council agreed with most of the recommendations but neither agreed nor disagreed with the last, noting that government is free to determine its own expenditure priorities. It also noted that feedback should include details on why an approval was granted or an application was rejected.<sup>52</sup>

### **Input of local Members of Parliament**

**2.31** Inquiry stakeholders indicated that Members of Parliament play a role in requesting funding for projects in their constituencies.

**2.32** According to the Hon John Barilaro MP, Deputy Premier, local Members of Parliament are commonly asked for their input on funding and programs and this is consistent with the role of an MP to advocate on behalf of their community.<sup>53</sup> Some councils wrote in support of input from local members in identifying and advocating for projects in their local government area as in their view, MPs are elected to represent their communities and understand local needs.<sup>54</sup>

**2.33** However, a number of local councils argued that local members should not be the only voice in considering grant programs and should not be involved in determining or approving projects. For example, Bathurst Regional Council noted that council liaises with its local members for additional community feedback but would not support the local member having powers to veto grant applications.<sup>55</sup>

**2.34** Similarly, Narrabri Shire Council submitted that local MPs act as a voice for their communities, especially for smaller councils who may not be able to compete with other areas. However they stated that where members suggest projects they should not also be involved in the process of assessing or determining funding.<sup>56</sup> Leeton Shire Council accepted that grant programs may involve some degree of politics but stated that ultimately 'the decision as to whether to fund a project needs to be very much evidence-based'.<sup>57</sup>

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<sup>50</sup> Submission 61, Penrith City Council, p 4.

<sup>51</sup> Answers to questions on notice, Mr Steven Head, General Manager, and Mr Glen Magus, Director Corporate Support, Hornsby Shire Council, 21 October 2020, p 1.

<sup>52</sup> Answers to questions on notice, Mr Michael Edgar, General Manager, and Mrs Chanda Saba, Chief Financial Officer, The Hills Shire Council, 22 October 2020, pp 2-3.

<sup>53</sup> Submission 80, The Hon John Barilaro MP, Deputy Premier and Minister for Regional NSW, p 2.

<sup>54</sup> Submission 15, Goulburn Mulwaree Council, p 1; Submission 19, Bland Shire Council, pp 1-2; Submission 24, Gunnedah Shire Council, p 4.

<sup>55</sup> Submission 7, Bathurst Regional Council, p 2.

<sup>56</sup> Submission 14, Narrabri Shire Council, p 4.

<sup>57</sup> Submission 59, Leeton Shire Council, p 2.

### Ministerial discretion

- 2.35** Ministers often have discretion to approve funding guidelines and successful applications. Ministers are not obliged to follow the advice and recommendations of public servants in approving particular projects, but their discretion should be exercised according to program rules and recorded with reasons.
- 2.36** Stakeholders noted that ministerial discretion should always be exercised consistently with the stated aims and rules of each grant program,<sup>58</sup> and programs should be designed so they contain a clear distinction between administrative and political processes.<sup>59</sup>
- 2.37** ICAC argued that while ministerial discretionary power may be broad, it is not unfettered. The Chief Commissioner, Mr Hall, indicated that ICAC acknowledges ministers have legitimate discretionary powers to include political considerations in decision-making and formulating policy. However, he stated ICAC does not accept the proposition that ministerial discretion is not subject to constraint or limitation.<sup>60</sup>
- 2.38** When approving grants, Federal Ministers are required to provide written reasons if they exercise their ministerial discretion and do not follow the recommendation provided by the public service.<sup>61</sup> However, New South Wales ministers do not have the same obligation.
- 2.39** ICAC noted that ministers may, in exercising their discretion, prefer particular regions or electorates in order to pursue political objectives, or create or expand a grant scheme for a political objective. This in itself is not necessarily corrupt conduct, as long as it is in pursuit of a legitimate public interest.<sup>62</sup>
- 2.40** ICAC also noted that 'pork-barrelling' is not necessarily illegal conduct, but is not a desirable way to administer public money.<sup>63</sup>
- 2.41** The exercise of ministerial discretion is constrained by public interest principles not to act for personal benefit or to breach public trust. These principles are reflected in the NSW Ministerial Code of Conduct, found in the *Independent Commission Against Corruption Regulation 2017*, which states that ministers have a responsibility to maintain public trust and public confidence.<sup>64</sup> Mr Hall stated that 'whatever its source, the principal obligation or requirement is that the exercise of the power should be for a public interest purpose'.<sup>65</sup> Summarising the exercise of ministerial power according to these principles, he stated:

[T]he exercise of ministerial power, in accordance with the principles that inform the exercise of public power, must be undertaken honestly and must be exercised properly

<sup>58</sup> Submission 20, NSW Council of Social Service (NCOSS), p 2.

<sup>59</sup> Submission 12, Mosman Municipal Council, p 3.

<sup>60</sup> Evidence, Mr Hall, 16 October 2020, p 3.

<sup>61</sup> Submission 92, Independent Commission Against Corruption, pp 4-5; Australia Government Department of Finance, *Approving a grant: Briefing requirements: What do officials need to document?* <<https://www.finance.gov.au/government/commonwealth-grants/approving-grant>>

<sup>62</sup> Submission 92, Independent Commission Against Corruption, p 7.

<sup>63</sup> Submission 92, Independent Commission Against Corruption, pp 7-8.

<sup>64</sup> Submission 92, Independent Commission Against Corruption, pp 7-8.

<sup>65</sup> Evidence, Mr Hall, 16 October 2020, p 2.

in the public interest and not improperly for reasons or purposes that are extraneous to the public interest or to the purpose for which the power exists.<sup>66</sup>

**2.42** ICAC outlined when the exercise of ministerial discretion may constitute corrupt conduct. In particular, it noted that breach of public trust by a public official, if sufficiently serious, may constitute corrupt conduct under the *Independent Commission Against Corruption Act 1988* or 'misconduct in public office' (a common law offence).<sup>67</sup> Breach of public trust may arise from 'any action by a politician that causes a public servant to do or say something that is dishonest or contrary to the stated terms and conditions of a grants program'. If serious enough, breach of public trust may amount to corruption.<sup>68</sup>

**2.43** ICAC also submitted that the following situations could give rise to a serious breach of public trust in the administration of grant programs, depending on the specific circumstances:

- designing eligibility and selection criteria to favour a particular applicant at the expense of the public interest
- intentionally misapplying nominated selection criteria, or directing a public servant to do so
- encouraging a public official to create false or incomplete records or to conceal the involvement of an elected official, or any other wilful suppression of grants scheme information
- directing or urging a public servant to make a decision preferred by the Minister if the Minister is not the appointed decision-maker
- deliberately failing to act on a reasonable suspicion of fraud, misappropriation or misuse of grant funds
- any action that leads to an unsuccessful applicant receiving false information about why it was unsuccessful.<sup>69</sup>

**2.44** Mr Hall stated that ministerial discretion may not be exercised to 'negate or rewrite the terms and/or the operation' of an established grants scheme.<sup>70</sup> If a grant program is designed so that proposed projects are assessed according to specified eligibility and selection criteria, a minister may not permissibly approve grants that do not meet the required criteria.<sup>71</sup> Similarly, ministerial intervention 'to skew or alter a result that has gone through a prescribed selection process', if it is done to enhance the prospects of electoral success, may be an illegitimate use of power.<sup>72</sup>

**2.45** In this context, Mr Hall said that 'pork-barrelling' may constitute corrupt conduct where a minister overrides an established grant program decision-making process to gain an electoral advantage. He stated (emphasis added):

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<sup>66</sup> Evidence, Mr Hall, 16 October 2020, p 2.

<sup>67</sup> Submission 92, Independent Commission Against Corruption, p 8.

<sup>68</sup> Submission 92, Independent Commission Against Corruption, p 10.

<sup>69</sup> Submission 92, Independent Commission Against Corruption, p 9.

<sup>70</sup> Evidence, Mr Hall, 16 October 2020, p 3.

<sup>71</sup> Submission 92, Independent Commission Against Corruption, p 10.

<sup>72</sup> Evidence, Mr Hall, 16 October 2020, p 4.

Whilst every case necessarily turns on its own factual circumstances, if a minister intervenes and overrides a government grant program or scheme, including in particular in relation to the decision-making processes by which successful applicants are determined, **and intentionally does so for the purposes of possible electoral advantage**, such intervention could constitute corrupt conduct under the provisions of the *Independent Commission Against Corruption Act 1988*.<sup>73</sup>

- 2.46 Mr Hall said that in order for such an exercise of ministerial discretion to amount to misconduct in public office, the power or discretion must have been 'intentionally exercised for an improper or illegitimate purpose' and a 'but for' test of causation would apply.<sup>74</sup> Exercising the power to obtain an unfair electoral advantage, may, in itself, satisfy the 'but for' purpose test but it would depend on the circumstances.<sup>75</sup>

## Committee comment

- 2.47 Government grant programs should always be designed and administered according to principles of transparency and accountability and to benefit the public interest. While these principles are important in any government process, they are particularly important when public money is being spent. The public has a reasonable expectation that grant programs will be designed and administered fairly and appropriately. This is important for public confidence in government and its processes. The principles of transparency and accountability are particularly important in the design and administration of grant programs, which can blur the lines between government administration and politics.
- 2.48 Fundamental to ensuring transparency and accountability is accessible information. At a minimum, all potential applicants should be informed about upcoming potential funding opportunities and have access to enough information about key aspects of the grant such as eligibility and grant objectives. Information should also be accessible to the general public as all citizens have an interest in ensuring public money is spent appropriately. Information should continue to be accessible and timely throughout the application process and details of successful applicants, as well as details of overall funding allocations, should also be made publicly available. Details of unsuccessful applicants must be made available to oversight bodies, including the Parliament of NSW, on request.
- 2.49 Transparency and accountability should be built into the design of grant programs. This means programs should contain adequate assessment processes to ensure that the often limited funding available is sent where it will provide most value to the community. Programs should be designed so they contain clear delineation between administrative and political processes, set out a clear decision-making process and require documentation.
- 2.50 Program objectives, eligibility and rules should be clear and detailed and published prior to applications closing. Publishing grant guidelines is particularly important for promoting transparency and assists agencies such as the Audit Office to review the administration of grant programs. The committee notes the suggestion of the Independent Commission Against Corruption that input into grant guidelines from an external body, such as the Auditor-General,

<sup>73</sup> Evidence, Mr Hall, 16 October 2020, p 2.

<sup>74</sup> Evidence, Mr Hall, 16 October 2020, p 3.

<sup>75</sup> Evidence, Mr Hall, 16 October 2020, p 3.

would help to ensure guidelines are clear and detailed enough to ensure public confidence in the administration of grant programs.

- 2.51** Probity principles should be built into the design of grant programs and programs must then be administered according to these principles. This means applications should be assessed according to the stated aims and rules of the program and decisions documented throughout the process. Guidelines should also be applied consistently and recipients should be required to report on the progress of the funds and delivery of funded projects.
- 2.52** While local members may have valuable local knowledge, their role in a grant program should be clearly defined. Local members from all political parties should have equal access to suggest projects to ensure people in non-government electorates do not unfairly miss out. If local members are to have a decision-making role in a grant program, it should be clearly outlined in the guidelines.
- 2.53** The power to make decisions regarding the allocation of public money is a considerable one. All grant programs must have a designated decision-maker. Documentation recording decisions is a minimum requirement of every grant program, regardless of its size or objectives. It is proper practice that potential projects are assessed on their merits and an assessment of each potential project, with reasons, is then put in front of a decision-maker. Further, clear documentation recording a minister or delegated decision-maker's decision that is signed and dated, is fundamental.
- 2.54** Ministerial discretion in the administration of grant programs should be carefully managed. Ministerial discretion must be exercised according to the rules and guidelines of each program and is not unfettered. Where a particular program allows for a minister to vary, ignore or substitute a recommendation, this discretion should be exercised with caution and always be supported by recorded reasons.
- 2.55** The committee notes and adopts the evidence of the Independent Commission Against Corruption that ministers are subject to public interest principles under the Ministerial Code of Conduct and *Independent Commission Against Corruption Act 1988* and must always exercise their power for a public interest purpose. A serious breach of public trust may constitute an offence under the Act or common law and, if serious enough, may constitute corruption.
- 2.56** In particular, the committee notes the position of ICAC that ministerial discretion may not be exercised to negate or rewrite the terms of an established grant scheme or to alter a result that has gone through an appropriate selection process. The committee agrees with ICAC that pork-barrelling may constitute corrupt conduct, if a minister has inappropriately intervened in an established decision-making process under a grants program in order to seek an electoral advantage.

## **Design, administration and oversight of NSW Government grant programs**

- 2.57** NSW Government grant programs are overseen by their own departments or agencies under guidance set out in a best practice guide. In addition, the Auditor-General of NSW and the Independent Commission Against Corruption may investigate grant programs or particular aspects of grant programs according to relevant legislation and general principles of proper grants administration and good governance.

- 2.58** The Department of Premier and Cabinet and the Department of Regional NSW asserted that they have processes in place to ensure grant programs are administered transparently and represent value for money. The Department of Regional NSW stated that, while application and assessment processes vary between the different programs, the Department has a number of processes for managing grant programs, including:
- independent probity advice at design, implementation and acquittal stages
  - publishing grant guidelines and assessment criteria
  - conducting regular internal audits and reviews
  - providing application support and feedback to applicants
  - evaluating program processes and outcomes against NSW Treasury guidelines.<sup>76</sup>
- 2.59** The Department of Regional NSW further informed that each program has assessment methodologies and assurance processes in place, according to the type and size of the program, and that it regularly engages qualified experts to advise on the suitability and viability of projects.<sup>77</sup>
- 2.60** The Hon John Barilaro MP, Deputy Premier and Minister for Regional New South Wales, Industry and Trade, stated that for all of the grants he is the decision-maker for there is always a departmental or agency brief with recommendations signed by him.<sup>78</sup> Additionally, he stated that processes in the Department of Regional NSW include a probity officer and probity audit at the end of each program.<sup>79</sup>

### **NSW Government Best Practice Guide**

- 2.61** The Department of Premier and Cabinet's 'Good Practice Guide to Grants Administration' (hereafter 'the Guide') and circular C2010-16 'Good Practice Grants Administration' (hereafter 'the Circular') provide guidance to government agencies on the design and administration of grant programs. The Guide was last updated in 2010 following a performance audit conducted by the Audit Office in 2009.<sup>80</sup> As is noted below, neither document is legally binding or mandatory.
- 2.62** The Circular contains general advice to departments to consider consolidating grant program administration and to review grant programs and processes in light of the Auditor-General's 2009 performance review. The Guide contains advice on different stages of grants programs, from the plan and design stage, through administration and then evaluation.<sup>81</sup>

<sup>76</sup> Submission 73, Department of Regional NSW, p 1.

<sup>77</sup> Submission 73, Department of Regional NSW, pp 1-2.

<sup>78</sup> Evidence, The Hon John Barilaro MP, Deputy Premier and Minister for Regional New South Wales, Industry and Trade, 8 February 2021, p 4.

<sup>79</sup> Evidence, Mr Barilaro, 8 February 2021, p 5.

<sup>80</sup> Evidence, Ms Crawford, 16 October 2020, p 33.

<sup>81</sup> Submission 92, Independent Commission Against Corruption, pp 2-3.

- 2.63** The Guide sets out what grant program guidelines should contain and states that applications must be assessed according to criteria which should be published.<sup>82</sup> Under the Guide, an 'assessment process should be as transparent as possible' and include a recommendation stage and a decision-making stage, as well as formal conflict of interest statements by anyone involved in assessment.<sup>83</sup> The Guide recommends departments publish online a calendar of expected funding for the next 12 months as well as decision-making criteria and reasons for decisions. The Guide also sets out the standard steps to undertake in administering a grant program, including establishing a grants advisory committee, assessing applications (and documenting reasons), making recommendations to the department, and final approval by a minister or delegated officer.<sup>84</sup>
- 2.64** ICAC submitted that the Good Practice Guide does not provide much guidance on the appropriate role of ministers and members of Parliament in the grant process, including whether and how political objectives may impact the grant process. It noted, however, that the Guide appears to suggest that ministers may not depart from pre-determined selection criteria.<sup>85</sup>
- 2.65** ICAC further noted that the Commonwealth Department of Finance has more comprehensive guidelines for administering federal grant programs. The Commonwealth guidelines apply to grants administration by government departments and ministers and include mandatory requirements for ministers, including requirements that a minister must not approve a grant without written advice on its merits from officials, or without making reasonable enquiries that the expenditure would be a proper use of money. If a minister approves a grant contrary to a recommendation made to them, they must report it to the Finance Minister. Ministers must also record, in writing, the basis for their approval.<sup>86</sup>
- 2.66** ICAC noted that the New South Wales Guide provides guidance only, with compliance monitored largely by each government cluster or agency. While ICAC stated it had not fully assessed compliance with the Guide, it observed that 'based on the complaints it receives, compliance across the public sector could be improved'.<sup>87</sup>
- 2.67** Ms Margaret Crawford, Auditor-General, also pointed the committee to the Commonwealth guide which she described as 'really quite a comprehensive and practical guide'.<sup>88</sup> Ms Crawford noted that the Commonwealth guidance is 'more detailed and is very, very clear on roles and responsibilities of ministers and departments'. In comparison, Ms Crawford said the New South Wales Guide does not contain as much detail and agreed it could be updated.<sup>89</sup>
- 2.68** Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, described the Guide as 'non-binding guidance' for

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<sup>82</sup> Department of Premier and Cabinet, *Good Practice Guide to Grants Administration*, pp 8-10 and 12. <https://www.dpc.nsw.gov.au/assets/memos-circulars/Good-Practice-Guide-Nov-2010-Revision.pdf>.

<sup>83</sup> Department of Premier and Cabinet, *Good Practice Guide to Grants Administration*, p 3.

<sup>84</sup> Department of Premier and Cabinet, *Good Practice Guide to Grants Administration*, pp 12-13.

<sup>85</sup> Submission 92, Independent Commission Against Corruption, p 3.

<sup>86</sup> Submission 92, Independent Commission Against Corruption, p 4.

<sup>87</sup> Submission 92, Independent Commission Against Corruption, p 3.

<sup>88</sup> Evidence, Ms Crawford, 16 October 2020, p 42.

<sup>89</sup> Evidence, Ms Crawford, 16 October 2020, p 43.

designing grant programs and stressed his belief in the importance of flexibility in the way programs are structured and administered.<sup>90</sup>

**2.69** Mr Chris Hanger, Deputy Secretary, Public Works Advisory and Regional Development, Department of Regional NSW, however, said that the Department of Regional NSW takes the Guide into account, as well as a Treasury circular around program evaluation, when designing its grant programs.<sup>91</sup>

**2.70** ICAC also noted that some aspects of the Guide appear to be outdated and some hyperlinks no longer work.<sup>92</sup> The Hon Peter Hall QC, Chief Commissioner, stated that the Guide and related Circular 'address the headline issues' but recommended they be reviewed and 'brought up to what is now regarded as best practice'.<sup>93</sup>

**2.71** ICAC recommended the Good Practice Guide be revised to address the following:

- obligations to act ethically and in accordance with general probity principles such as transparency, accountability and fairness
- the proper role of ministers, other elected officials and their staff in the grants process
- better practice from other jurisdictions, such as the Commonwealth Grants Rules and Guidelines
- the key finding and recommendations from ICAC's Operation Tarlo<sup>94</sup>
- mandatory requirements such as elements that grants must be transparent, use formal funding agreements with standard terms and conditions and include independent audits for large or complex grants
- the need for a single online directory of available grant schemes, including their terms and conditions.<sup>95</sup>

**2.72** Cr Linda Scott, President of Local Government NSW, was asked to comment on ICAC's suggested changes to the Good Practice Guide. Cr Scott advised that Local Government NSW supported all the suggested recommendations but said that, in regards to mandatory requirements for grants administration, local councils are already subject to stringent compliance and reporting requirements and any additional requirements should consider what additional burden this would place on councils.<sup>96</sup>

<sup>90</sup> Evidence, Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, 21 September 2020, p 53.

<sup>91</sup> Evidence, Mr Hanger, 16 October 2020, p 18.

<sup>92</sup> Submission 92, Independent Commission Against Corruption, p 3.

<sup>93</sup> Evidence, Mr Hall, 16 October 2020, p 9.

<sup>94</sup> Key finding and recommendations of this investigation into the conduct of a principal officer of two non-government organisations and others are summarised in Submission 92, Independent Commission Against Corruption, pp 5-7.

<sup>95</sup> Submission 92, Independent Commission Against Corruption, p 17.

<sup>96</sup> Answers to questions on notice, Cr Linda Scott, President, Local Government NSW, 13 October 2020, pp 2-3.

### Local council and other stakeholder views

- 2.73** Inquiry participants provided differing views regarding whether grant programs are appropriately managed in New South Wales with transparency and accountability. A number of local councils provided submissions in support of the way grants are managed and determined, though many had recommendations for improvement (discussed further in chapter 5).
- 2.74** Some councils noted they were satisfied with the current measures in place to ensure integrity of grant schemes and public confidence in them.<sup>97</sup> For example, some suggested that their experience with both successful and unsuccessful applications indicate there is a level playing field and fair assessment of applications.<sup>98</sup>
- 2.75** Mr John Gordon, City Presentation Manager at Penrith City Council, described the way grant programs are administered as an 'umpire's decision':
- We are comfortable that we are in a competitive environment and when demand exceeds supply, there will obviously be times when all organisations are disappointed with outcomes. We are of the view that the objectives and outcomes of the grants are generally clearly articulated in the grant documents, and we take the umpire's decision on board and move on to the next round.<sup>99</sup>
- 2.76** Others, however, stated that in their experience NSW Government grants have not been administered transparently. City of Newcastle suggested local members had too much influence over grant funding and that it had been cut out of the process as its local government area did not fall within a Coalition state electorate. Cr Nuatali Nelmes, Lord Mayor, stated she felt the council did not have equal access to state grant programs as their local State members tend to be opposition members.<sup>100</sup>
- 2.77** Other councils submitted concerns about lack of transparency in grant decisions and lack of information on funding allocations. In its submission, Lismore City Council, noted it 'has experienced a significant lack of transparency regarding the assessment and outcome advice of applications lodged over the past two years'.<sup>101</sup> Similarly, Federation Council stated it has heard numerous complaints from local groups about a lack of communication from relevant government agencies when applications are unsuccessful and indicated that this has caused local groups to lose confidence in the grants process.<sup>102</sup>
- 2.78** NCOSS noted that, generally, information on NSW Government grant programs is not widely accessible and not presented in the spirit of the *Government Information (Public Access) Act 2009*. It also argued that current reporting on grants is inconsistent and information available on the overall level of expenditure varies across programs. NCOSS recommended the publication of a

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<sup>97</sup> Submission 4, Mid-Western Regional Council, p 2; Submission 24, Gunnedah Shire Council, p 4.

<sup>98</sup> Submission 14, Narrabri Shire Council, pp 2-3; Submission 30, Cabonne Council, p 1.

<sup>99</sup> Evidence, Mr John Gordon, City Presentation Manager, Penrith City Council, 21 September 2020, p 30.

<sup>100</sup> Evidence, Cr Nelmes, 27 November 2020, p 6.

<sup>101</sup> Submission 28, Lismore City Council, p 2.

<sup>102</sup> Submission 49, Federation Council, pp 6-7.

consistent set of financial accounts to allow for greater public scrutiny and analysis of expenditure.<sup>103</sup>

- 2.79** Concerns that NSW Government grant programs lack transparency were echoed by members of the public who submitted to the inquiry. These stakeholders noted that it is very hard to find funding allocations in each local government area,<sup>104</sup> and gave examples of how information was not made available after multiple requests for information and requests under the *Government Information (Public Access) Act 2009*.<sup>105</sup> Nambucca Valley Youth Services Centre, for example, advised they had experienced a lack of communication regarding their application for the Stronger Country Communities Fund and that there was very little information available about successful projects under the fund generally.<sup>106</sup>
- 2.80** Lake Macquarie City Council suggested that information on NSW Government grant programs be made available in a format similar to the Australian Government's Grant Connect website. Lake Macquarie explained that Grant Connect is a centralised and comprehensive database of current and future grant programs that publishes high-level information on the awarding of grants.<sup>107</sup>
- 2.81** Public concerns with the administration of NSW Government grant programs are also demonstrated in complaints made by members of the public to ICAC. ICAC noted it had received complaints regarding:
- grants awarded with inadequate applications or community consultation
  - pork-barrelling
  - grants not awarded on the basis of merit
  - unclear or opaque reporting on successful grant recipients.<sup>108</sup>

### **Oversight of government grants**

- 2.82** As discussed in chapter 1, the Audit Office and Independent Commission Against Corruption play important roles in the oversight of NSW Government grants.

#### ***The Audit Office***

- 2.83** The Audit Office has conducted five performance audits over the past seven years examining particular grants administration processes in detail, including regional assistance projects, grants to non-government schools, government assistance to industry, regional road funding and the ClubGRANTS scheme.<sup>109</sup>

<sup>103</sup> Submission 20, NSW Council of Social Service (NCOSS), p 2.

<sup>104</sup> Submission 5, Halls Accounting Pty Ltd, p 1.

<sup>105</sup> Submission 2, Ms Cathy Merchant, pp 1-7.

<sup>106</sup> Submission 62, Nambucca Valley Youth Services Centre, pp 1-2.

<sup>107</sup> Submission 93, Lake Macquarie City Council, p 2.

<sup>108</sup> Submission 92, Independent Commission Against Corruption, p 5.

<sup>109</sup> Evidence, Ms Crawford, 16 October 2020, p 33.

- 2.84** The Auditor-General, Ms Crawford, indicated that these performance audits have identified some consistent gaps in monitoring whether funds were achieving their intended goals and had demonstrated the importance of agencies keeping accurate records, maintaining transparency and reporting publicly.<sup>110</sup> In particular, these audits had found problems with inadequate documentation, with Ms Crawford noting:
- [I]n fact nearly all of our audits of grant programs have made reference to absence of documentation, especially documentation being very specific as to the reason for the decision, or especially if a recommendation is overturned.<sup>111</sup>
- 2.85** Financial audits examine the financial statements of all State government agencies, including entities which manage grant programs such as local government. The aim of a financial audit is to account for funding provided for grants – to examine how the money is spent. A financial audit is limited to examining whether a grant transaction took place and whether it was accurately recorded.<sup>112</sup> Mr Scott Stanton, Acting Deputy Auditor-General, Audit Office of New South Wales, stated that the focus of a financial audit is 'on assurance that the financial statement as a whole is accurate', rather than examining an individual grant program, which may be covered in a performance audit.<sup>113</sup>
- 2.86** Performance audits examine whether a program was administered according to relevant guidelines and legislation. Ms Margaret Crawford, Auditor-General, outlined that a performance audit related to a grant program would examine how an agency has administered a program according to the legislative framework and intended outcomes of the program.<sup>114</sup> This includes an examination of how administrative arrangements were set up, as well as considering 'proportionate arrangements that clearly go to the intent of the program and then, having established that, how well did the agency actually carry out that intent'.<sup>115</sup>
- 2.87** Ms Migotto, who is in charge of performance audits, explained that the Audit Office is limited in the evidence it receives and its powers. It relies on information provided by government agencies to conduct its performance audits, which may include documentation and interviews with staff.<sup>116</sup> She informed that performance audits begin with an information request and if there are obvious gaps in the information provided, such as in documentation around decision-making, the Audit Office will 'seek to further understand why those gaps exist'. The Audit Office has never been provided with evidence such as text messages.<sup>117</sup>
- 2.88** ICAC noted that the Audit Office does not have 'follow the dollar' powers. This means it cannot audit the use of taxpayers' money once it passes into the hands of a non-government entity.<sup>118</sup> Ms Crawford agreed that the powers of the Audit Office are limited as it does not have these

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<sup>110</sup> Evidence, Ms Crawford, 16 October 2020, p 33.

<sup>111</sup> Evidence, Ms Crawford, 16 October 2020, pp 38-39.

<sup>112</sup> Evidence, Mr Scott Stanton, Acting Deputy Auditor-General, Audit Office of New South Wales, 16 October 2020, p 34.

<sup>113</sup> Evidence, Mr Stanton, 16 October 2020, p 34.

<sup>114</sup> Evidence, Ms Crawford, 16 October 2020, p 34.

<sup>115</sup> Evidence, Ms Crawford, 16 October 2020, p 35.

<sup>116</sup> Evidence, Ms Migotto, 16 October 2020, p 41.

<sup>117</sup> Evidence, Ms Migotto, 16 October 2020, p 41.

<sup>118</sup> Submission 92, Independent Commission Against Corruption, p 17.

powers and noted the New South Wales Audit Office is 'at odds with other audit offices around Australia and New Zealand in not having that mandate'.<sup>119</sup> ICAC submitted that it supports the creation of 'follow the dollar' powers for the Audit Office.<sup>120</sup> Cr Scott, from Local Government NSW also supported this suggestion, but noted that local councils are already subject to stringent compliance and reporting requirements.<sup>121</sup>

### *The Independent Commission Against Corruption*

- 2.89** ICAC noted that, at the time it provided its submission to the inquiry in August 2020, it had not made any findings of corrupt conduct in relation to grant schemes. While it suggested this may indicate that most grant schemes are administered with a sufficient degree of probity, it noted that it receives numerous complaints about grants and may not investigate small amounts of funds as it must prioritise investigating serious or systemic corrupt conduct.<sup>122</sup>
- 2.90** ICAC had recently informed the committee during another inquiry that it is chronically underfunded and its independence is threatened by a budget process which is determined by the NSW Government.<sup>123</sup> Despite this, the Hon Peter Hall QC, Chief Commissioner of ICAC, assured the committee that it 'will do what is necessary to ensure integrity in funding, particularly in relation to program grants' and will investigate alleged or suspected misconduct in relation to grants.<sup>124</sup>

### **Committee comment**

- 2.91** Following evidence to this inquiry, the committee is of the view that there are no binding and effective systems in place to ensure transparency and accountability in NSW Government grant programs. The NSW Government sought to assure the committee it has robust processes in place, but provided very little detail about what these processes are, how they operate and how they are enforced. The committee is therefore of the view that the NSW Government does not have adequate processes in place to ensure the integrity of grant programs. This has allowed grant programs to be misused for political ends (see discussion of the Stronger Communities Fund in chapters 3 and 4).
- 2.92** The Good Practice Guide to Grants Administration provides some guidance to departments but lacks detail and is outdated. It is guidance only and does not appear to be enforced or enforceable. It is not clear to the committee if there are even any administrative attempts to have various agencies comply with the Guide, there was certainly no evidence in the materials before this committee that any attempts were made in any of the grant programs currently under review. Further, there is clearly no monitoring of compliance by the Department of Premier and Cabinet or any other government agency.

<sup>119</sup> Evidence, Ms Crawford, 16 October 2020, pp 40-41.

<sup>120</sup> Submission 92, Independent Commission Against Corruption, p 17.

<sup>121</sup> Answers to questions on notice, Cr Scott, 12 October 2020, pp 2-3.

<sup>122</sup> Submission 92, Independent Commission Against Corruption, p 1.

<sup>123</sup> Public Accountability Committee, *Budget process for independent oversight bodies and the Parliament of New South Wales: First report*, March 2020, pp 13-15; 28-30; 34-37.

<sup>124</sup> Evidence, Mr Hall, 16 October 2020, p 4.

- 2.93** The committee notes that the Good Practice Guide to Grants Administration has not been updated since 2010, the entire time that the Liberals and Nationals have been in government. This is despite significant Audit Office reports during that time that are relevant, including most recently into the Federal sports rorts scandal released in January 2020. Indeed the last update 10 years ago was in the wake of a relevant Audit Office report, and sought to implement those recommendations.
- 2.94** It is time the Guide was reviewed and updated to align with current best practice and to prescribe minimum key requirements. It should also be updated to include guidelines around the input and decision-making by members of parliament and ministers. The revised Guide should be codified in legislation or regulation so that its requirements are mandatory and enforceable.
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### **Recommendation 1**

That the NSW Government review and update the Good Practice Guide to Grants Administration and related circular to ensure it aligns with current best practice including:

- minimum requirements including publication of guidelines, clear chains of authority and decision-making and adequate record keeping
- guidelines around the role of members of parliament and discretion of ministers and other decision-makers.

### **Recommendation 2**

That the NSW Government ensure that key requirements of the Good Practice Guide to Grants Administration are enforceable.

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- 2.95** The committee is concerned that stakeholders have experienced difficulties in accessing information about particular grant schemes and that there is very little information available on NSW Government grant programs generally. To increase transparency and accountability, clear and detailed information on grant programs, such as grant guidelines and details about funding allocations, should be made publicly available and easily accessible. The committee calls on the NSW Government to commit to the proactive public release of information as set out in the *Government Information (Public Access) Act 2009*. We therefore recommend that detailed information about all grant programs is published online prior to applications opening and that the NSW Government investigate the use of a central website or platform for the publication of this information.
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### **Recommendation 3**

That the NSW Government create and maintain a central website, similar to the Australian Government's Grant Connect website for:

- all grant application information, including guidelines, objectives and eligibility
  - an annual calendar with open and closing dates along with projected times of project announcements.
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- 2.96** The Audit Office plays an invaluable role in monitoring the integrity of government grant programs but its remit, powers and resources are limited. Performance audits are limited to an examination of whether a program was administered according to relevant guidelines and legislation. The Audit Office does not examine whether the guidelines of a program are adequate or whether the program was designed to ensure it would be administered properly. The Audit Office's program of performance audits is also limited by its limited resources and mandate. The committee believes there is scope for the Audit Office to undertake more systematic review of government grant programs and to widen the remit of audits to consider the design of programs, rather than just their administration.
- 2.97** Further, the Audit Office relies on information voluntarily provided by government agencies but does not receive evidence from newer digital communication platforms such as texts or mobile phone applications. Based on the evidence received it is clear that the Audit Office is under-resourced and, unlike its counterparts in Australia and New Zealand, does not have 'follow the dollar' powers to pursue government funds dispersed to third party providers.

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#### **Recommendation 4**

That the NSW Government:

- increase the powers and remit of the Auditor-General of New South Wales to include 'follow the dollar' powers, consistent with other Australian State and Territory jurisdictions
- enable the Auditor-General of New South Wales to conduct more regular performance audits on the design and guidelines of government grant programs.

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- 2.98** The Independent Commission Against Corruption is fundamental in ensuring the government acts in accordance with the *Independent Commission Against Corruption Act 1988*. However, its remit is similarly narrow and resources similarly stretched. This committee reiterates comments made in its two reports for the inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales regarding genuinely independent funding of the Independent Commission Against Corruption.



## Chapter 3 The Stronger Communities Fund

Background to the Stronger Communities Fund is provided in Chapter 1. This chapter along with chapter 4 explore the Stronger Communities Fund tied grants round in which \$252 million was allocated for various projects from the end of June 2018. This chapter examines allegations of pork-barrelling as well as the largest and most controversial grant made under the ties grants round – a grant of \$90 million to Hornsby Shire Council. It then explores the changes to the fund guidelines to modify the parameters by which councils were eligible for funding.

The next chapter will consider the process by which potential projects were identified, assessed and allocated. This includes an examination of the involvement of ministerial offices, including record-keeping in the Office of the Premier. Chapter 4 will also outline conflicting evidence received about who approved \$252 million of projects and will consider the views of the Independent Commission Against Corruption and Auditor-General on the design and administration of the fund.

### The tied grants round

- 3.1** As discussed in chapter 1, the Stronger Communities Fund was delivered in two separate tranches of funding: a first round and a second round, known as the 'tied grants round'.
- 3.2** The guidelines were revised for the tied grants round to broaden the scope of councils that were eligible for funding. Grants were made to a number of local councils that were the subject of a merger proposal following the NSW Government's council amalgamation process in 2016, but did not actually merge. This was different from the first round, where funds were directed to merged councils only. The tied grants round was the focus of the committee's examination of the Stronger Communities Fund.

### Pork-barrelling concerns

- 3.3** In May 2020, media reports raised concerns that the Stronger Communities Fund had been used to gain an advantage in the 2019 state election, a practice known as 'pork-barrelling'. Specifically, concerns were raised that a large amount of money in the tied grants round had been allocated to local councils that were not the intended recipients of the fund and that a significant proportion of the \$252 million allocated in the round had been given to local councils in Coalition or marginal state electorates.<sup>125</sup>
- 3.4** Local councils that had merged but did not receive funding under the tied grants round echoed these concerns. City of Canterbury-Bankstown Council claimed that almost all the funds in the tied grants round were distributed to local councils in Coalition-held state electorates, with only \$5 million allocated to local councils in Opposition seats.<sup>126</sup> Cr Asfour, Mayor, estimated that if the funds had been allocated on a per capita basis, Canterbury-Bankstown Council would have received around \$35 to \$40 million.<sup>127</sup>

<sup>125</sup> *News*, 9News, 18 May 2020, 6.00 pm.

<sup>126</sup> Submission 17, City of Canterbury-Bankstown Council, pp 1-2; 5-6.

<sup>127</sup> Evidence, Cr Khal Asfour, Mayor, City of Canterbury-Bankstown Council, 21 September 2020, p 21.

- 3.5** Cr Asfour said he was particularly concerned that Canterbury-Bankstown Council did not receive funds as he had written to then Minister for Local Government in June 2018, around the time the guidelines were being revised, to ask for additional funding, and was not told about the tied grants round.<sup>128</sup>
- 3.6** Cr Asfour summarised his frustration with the Stronger Communities Fund process, stating it lacked transparency, integrity and equity:
- To be excluded and not even told about it goes to the very heart of the decision-making of the government, where they splash around cash – 95 per cent of which goes to Liberal and Nationals-held electorates. It totally throws out of the window principles of transparency, integrity and equity ...<sup>129</sup>
- 3.7** Cr Darcy Byrne, Mayor of Inner West Council, stated that \$241 million of a total \$252 million available in the round was allocated to local councils in Coalition-held seats, which represents 95 per cent of the funding available. According to his calculations, 87 per cent of projects funded under the tied grants round were located within Coalition-held electorates – a total of 208 of 238 projects.<sup>130</sup>
- 3.8** Cr Byrne argued that 50 per cent of the funding distributed in the tied grants round was provided to local councils that did not merge and estimated that if the tied grants round had been allocated on a per capita basis, Inner West Council would have received around \$24 million.<sup>131</sup>
- 3.9** Cr Byrne also noted that a number of significant grants under the round had been made just prior to the government entering caretaker period before the 2019 election. These include grants totalling around \$4 million and \$1 million to local councils in the marginal state electorates of Murray and Coogee.<sup>132</sup>
- 3.10** Mr Tony Harris, Former NSW Auditor-General told the committee that during his 50 years in the public service he had not witnessed a program 'as purely politically administered as this'.<sup>133</sup> He stated further: 'if the same standards that existed today were those that existed when Ros Kelly resigned because she provided no indication of how she made her decisions, then the Premier would resign'.<sup>134</sup>
- 3.11** In a press conference on 26 November 2020 the Premier, the Hon Gladys Berejiklian MP, suggested that the NSW Government had engaged in pork-barrelling in the design and administration of the tied grants round but argued that the practice was 'not illegal' and that it was a common practice in politics.<sup>135</sup>

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<sup>128</sup> Evidence, Cr Asfour, 21 September 2020, pp 14; 16.

<sup>129</sup> Evidence, Cr Asfour, 21 September 2020, p 14.

<sup>130</sup> Submission 82, Cr Darcy Byrne, Mayor of Inner West Council, p 1.

<sup>131</sup> Evidence, Cr Darcy Byrne, Mayor, Inner West Council, 21 September 2020, pp 16-17.

<sup>132</sup> Submission 82, Cr Darcy Byrne, Mayor of Inner West Council, p 2.

<sup>133</sup> Evidence, Mr Tony Harris, Former Auditor-General of NSW, 9 December 2020, p 60.

<sup>134</sup> Evidence, Mr Harris, 9 December 2020, p 62.

<sup>135</sup> Lucy Cormack and Alexandra Smith, 'Premier says pork barrelling "not illegal" as she defends council grants program', *Sydney Morning Herald*, 26 November 2020; *The 7.30 Report*, ABC, 26 November 2020.

**3.12** The Premier also said:

Governments in all positions make commitments to the community in order to curry favour. I think that is part of the political process whether we like it or not

...

The term pork-barrelling is common parlance ... it is not something that I know that the community is comfortable with and if that is the accusation made on this occasion ... well then I am happy to accept that commentary.<sup>136</sup>

**3.13** The Premier said many of the projects that received funding were in non-government held seats, 'but if the accusation is that the government favoured certain areas, well that is an accusation we will wear'.<sup>137</sup>

**3.14** In evidence to Portfolio Committee No. 1 as part of a Budget Estimates 2020-21 hearing in March 2021, the Premier stated that pork-barrelling should not be normal practice but that 'governments should be always responding to where the need is'. When asked whether she stood by comments that pork-barrelling is an accusation the NSW Government would wear, the Premier stated that governments must spend money where it is required and argued that all political parties make election commitments to local communities:

In the context of those comments I made, I accept that it is not in the public interest to have any suggestion that governments do not put dollars where they are required. But to suggest that political parties do not make commitments to the electorate is not being honest with the community, and that was the comment I was making. It is not something that I think the public stomachs or should be the modus operandi, but from time to time do political parties make election commitments? Do political parties make commitments to various communities? Unfortunately, that is part and parcel ...<sup>138</sup>

**3.15** The Deputy Premier, the Hon John Barilaro MP also commented on accusations of pork-barrelling, describing pork-barrelling as an election commitment and part of the democratic process of elections:

What we call pork-barrelling is investment. In one way, when you think about it, at every single election that every party goes to we make commitments. You want to call that pork-barrelling, you want to call that buying votes, that is what the elections are for. It is the democratic process, something I am very proud of.<sup>139</sup>

**3.16** However, the Stronger Communities Fund tied grants round was not an election commitment. In fact, as will be discussed, the NSW Government did not publish any details about the fund including that \$252 million was available for local communities.

<sup>136</sup> Lucy Cormack and Alexandra Smith, 'Premier says pork barrelling "not illegal" as she defends council grants program', *Sydney Morning Herald*, 26 November 2020.

<sup>137</sup> *The 7.30 Report*, ABC, 26 November 2020.

<sup>138</sup> Evidence, Portfolio Committee No. 1 – Premier and Finance, Budget Estimates 2020-2021, The Hon Gladys Berejiklian MP, Premier, 4 March 2021 (uncorrected transcript), p 12.

<sup>139</sup> Evidence, The Hon John Barilaro MP, Deputy Premier and Minister for Regional New South Wales, Industry and Trade, 8 February 2021, p 4.

## Particular grants of concern

- 3.17** The committee received evidence that particular grants made under the Stronger Communities Fund appeared to be politically motivated and lacked transparency.
- 3.18** While the most controversial was a grant to Hornsby Shire Council, concerns were also raised about grants for projects in the Snowy Valleys and Central Coast Councils.

### Hornsby Shire Council grant

- 3.19** The largest grant made under the tied grants round was \$90 million provided to Hornsby Shire Council. The grant consisted of \$50 million to rehabilitate a former quarry at Hornsby Park and \$40 million for the Westleigh recreation area.<sup>140</sup>
- 3.20** Stakeholders raised concerns about the lack of any application process for the grant and the speed with which the grant was made, as well as the propriety of awarding such a large amount of money - the highest to any local council under the program - to a council that was not originally eligible for the program.<sup>141</sup>

### *Application process*

- 3.21** The committee received evidence that there was no real application process for the grant made to Hornsby Shire Council and funds were provided extremely quickly, within three days of council being informed there were potential funds available. The key dates have been set out in the table below.

**Table 2 Key dates related to the Hornsby Shire Council grant**

27 June 2018	Revised guidelines approved.
27 June 2018	Hornsby Shire Council contacted by the Office of Local Government regarding \$90 million grant.
28 June 2018	Hornsby Shire Council received relevant paperwork from the Office of Local Government, including a document entitled 'application form' and the revised guidelines.
30 June 2018	Payment of \$90 million was made to Hornsby Shire Council.

- 3.22** Hornsby Shire Council was first notified that funds were available under the tied grants round on 27 June 2018. This was the same day the revised guidelines (discussed in detail later in the chapter) were approved by the relevant Ministers and the same day the Office of Local Government was advised by the Premier's Office to make the payments to Hornsby Council.<sup>142</sup>

<sup>140</sup> Evidence, Mr Steven Head, General Manager, Hornsby Shire Council, 21 September 2020, p 33.

<sup>141</sup> Submission 17, City of Canterbury-Bankstown Council, pp 1-2; Submission 82, Cr Darcy Byrne, Mayor of Inner West Council, pp 2-4.

<sup>142</sup> Evidence, Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, 21 September 2020, p 53.

Hornsby Shire Council was initially notified by phone on 27 June 2018 and then by email at 5.00 pm that day, by Mr Tim Hurst, the Chief Executive Officer of the Office of Local Government.<sup>143</sup>

- 3.23** The next day, 28 June 2018, Hornsby Shire Council received the relevant paperwork from the Office of Local Government. This paperwork included a funding agreement and grant application. The application form was pre-populated by the Office of Local Government with the name of the two projects to be funded and how much was allocated for each project but no further details about the projects.<sup>144</sup>
- 3.24** Hornsby Shire Council signed the funding agreement and returned it to the Office of Local Government that day. Two days later, on 30 June 2018, Hornsby Shire Council received payment of \$90 million.<sup>145</sup> The process took a total of three days from notification of potential available funding to receipt of the funds.
- 3.25** Under the funding agreement, Hornsby Shire Council is required to submit a business plan and undergo a capital expenditure review process. When Mr Steven Head, General Manager of Hornsby Shire Council, appeared before the committee in September 2020, the council was in the process of completing the business case and undergoing the capital expenditure review using some of the funds provided under the grant.<sup>146</sup> The council also informed it had provided three progress reports to the Office of Local Government in May and August 2019 and February 2020.<sup>147</sup>

### *Concerns with the process*

- 3.26** Concerns were raised about the process by which Hornsby Shire Council had been given the grant, as it did not appear to involve an application process and occurred with inexplicable haste.
- 3.27** As noted in chapter 1, all funding agreements for projects funded under the tied grants round were produced to Portfolio Committee No. 7 as part of the inquiry into Budget Estimates 2019-2020. Attached to each of these funding agreements were an application form, the revised guidelines and an acquittal certificate.<sup>148</sup>
- 3.28** Mr Head was asked about the lack of detail in the application form. He recalled that some of the amounts and details were provided on the application form and he filled in 'some components'.<sup>149</sup> Mr Head agreed that normally a grant as large as \$90 million would require a

<sup>143</sup> Evidence, Mr Head, 21 September 2020, p 31.

<sup>144</sup> Evidence, Mr Head, 21 September 2020, pp 31-32; 35; Answers to questions on notice, Portfolio Committee No. 7 – Planning and Environment, Budget Estimates 2019-2020, Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, 8 April 2020, Attachment 16.

<sup>145</sup> Evidence, Mr Head, 21 September 2020, p 32.

<sup>146</sup> Evidence, Mr Head, 21 September 2020, p 39.

<sup>147</sup> Answers to questions on notice, Mr Steven Head, General Manager, Hornsby Shire Council, 21 October 2020, p 2.

<sup>148</sup> Answers to questions on notice, Portfolio Committee No. 7 – Planning and Environment, Budget Estimates 2019-2020, Mr Hurst, 8 April 2020, Attachments 1-33.

<sup>149</sup> Evidence, Mr Head, 21 September 2020, p 35.

detailed business case.<sup>150</sup> He also agreed the lack of detail was unusual, but suggested it was not unheard of, stating: 'I think it would be more usual than not that we would fill in a reasonable amount of detail but it is not uncommon to receive funds in the manner that we received them here'.<sup>151</sup>

- 3.29** Mr Head informed the committee that he was not aware the Stronger Communities Fund had been amended. He first became aware the fund had been revised and eligibility extended to include Hornsby Shire Council when being offered the funds.<sup>152</sup> He noted further: 'I think that happened upfront. I think the expectation for us was that if we completed the application form and sent it back ... that the funds were going to be made available to us'.<sup>153</sup>
- 3.30** When considering whether the speed of the grant was unusual, Mr Head stated that opportunities of this type sometimes arise very quickly and that 'at times funds that are available are sometimes quickly dispersed by governments when they are seen to have a need to do so'.<sup>154</sup>
- 3.31** Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, was also asked about the speed of the grant. Mr Hurst agreed it 'was certainly done very quickly' but stated 'I do not consider it unusual to be able to turn around the money to councils for those purposes that quickly'.<sup>155</sup>
- 3.32** When questioned about the Hornsby grant, representatives from The Hills Shire Council and Penrith City Council could not recall grant funding of that amount being offered to their councils in such a short time frame.<sup>156</sup>
- 3.33** In addition, they had never received a similar grant in the absence of a completed business case.<sup>157</sup> Mrs Chanda Saba, Chief Financial Officer of The Hills Shire Council and Mr John Gordon, City Presentation Manager at Penrith City Council, agreed that if their own council was distributing millions of dollars of funding, they would expect that a business case would be

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<sup>150</sup> Evidence, Mr Head, 21 September 2020, p 38.

<sup>151</sup> Evidence, Mr Head, 21 September 2020, p 35.

<sup>152</sup> Evidence, Mr Head, 21 September 2020, p 38.

<sup>153</sup> Evidence, Mr Head, 21 September 2020, p 42.

<sup>154</sup> Evidence, Mr Head, 21 September 2020, p 35

<sup>155</sup> Evidence, Mr Hurst, 21 September 2020, pp 44; 52.

Note: Mr Hurst was Acting Chief Executive Officer of the Office of Local Government from 2015 to 18 February 2018 and Chief Executive Officer from 19 February 2018 to 25 July 2019. In July 2019 as part of machinery of government changes, the Office of Local Government became part of the Department of Planning, Industry and Environment. Mr Hurst was responsible for the Office of Local Government as the Deputy Secretary, Local Government, Planning and Policy in the Department of Planning, Industry and Environment when he gave evidence to this committee in 2020 and 2021.

<sup>156</sup> Evidence, Mr John Gordon, City Presentation Manager, Penrith City Council, 21 September 2020, p 39; Evidence, Mr Michael Edgar, General Manager, The Hills Shire Council, 21 September 2020, p 39; Evidence, Mrs Chanda Saba, Chief Financial Officer, The Hills Shire Council, 21 September 2020, pp 35-36.

<sup>157</sup> Evidence, Mr Gordon, 21 September 2020, p 39; Evidence, Mr Edgar, 21 September 2020, p 39; Evidence, Mrs Saba, 21 September 2020, p 39.

completed and that the recipient would demonstrate they are capable of delivering the project, before funds are provided.<sup>158</sup>

- 3.34** Mr Hurst advised that he contacted Hornsby Shire Council about the grant and was responsible for authorising the funds. Mr Hurst was questioned about how he was reassured that an email indicating the Premier had signed off on projects was sufficient for him to execute a grant of \$90 million. Mr Hurst told the committee that the answer he received from the Premier's Office 'was sufficient to enable me to exercise my delegate authority to expend the funds' and that he had received internal written legal advice relating to the matter on 25 and 27 June 2018 (the approval process and emails will be analysed in the next chapter).<sup>159</sup>

***Reason for the grant***

- 3.35** Some stakeholders contended that the grant was unfair as Hornsby Shire Council was not a newly merged council and the Stronger Communities Fund had been established to support new councils that had merged.
- 3.36** Cr Darcy Byrne, Mayor of Inner West Council stated: 'To discover that \$90 million went to Hornsby which was not even amalgamated was really quite astounding'.<sup>160</sup> Cr Nuatali Nelmes, Lord Mayor of City of Newcastle noted 'the mayor there is very influential and obviously knows the right people in government to get the funding'.<sup>161</sup>
- 3.37** On the other hand, Hornsby Shire Council argued the grant was compensation for a significant financial disadvantage that arose from the merger process,<sup>162</sup> and that it funded two projects the Council had been seeking to fund for a long time.<sup>163</sup>
- 3.38** Hornsby Shire Council argued that it had lost a substantial part of its land and therefore ratepayer base to City of Parramatta Council as part the merger process. Hornsby Council estimated that, as a result of this loss, it was around '\$10 million per year worse off',<sup>164</sup> and that even after receiving the \$90 million grant it was still owed a further \$168 million in compensation.<sup>165</sup>
- 3.39** Mr Head noted that Hornsby Shire Council had been openly advocating about the boundary issue for some time and had been assured by the NSW Government it would not be worse off as a result of the changes.<sup>166</sup> These reassurances included a number of phone conversations from April to June 2018 with Mr Matthew Crocker, Former Policy Director in the Office of the Premier.<sup>167</sup>

<sup>158</sup> Evidence, Mr Gordon, 21 September 2020, p 39; Evidence, Mrs Saba, 21 September 2020, p 39.

<sup>159</sup> Answers to questions on notice, Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, 22 October 2020, pp 7-8.

<sup>160</sup> Evidence, Cr Byrne, 21 September 2020, p 16.

<sup>161</sup> Evidence, Cr Nuatali Nelmes, Lord Mayor, City of Newcastle, 27 November 2020, p 7.

<sup>162</sup> Evidence, Mr Head, 21 September 2020, p 29.

<sup>163</sup> Evidence, Mr Head, 21 September 2020, pp 29; 33.

<sup>164</sup> Evidence, Mr Head, 21 September 2020, pp 29; 41.

<sup>165</sup> Submission 16, Hornsby Shire Council, pp 2-3.

<sup>166</sup> Evidence, Mr Head, 21 September 2020, p 29; 37.

<sup>167</sup> Answers to questions on notice, Mr Head, 21 October 2020, p 1.

**3.40** Hornsby Shire Council said its application to the Stronger Communities Fund was made after a specific request from the Office of Local Government to do so and on the understanding that it served as part compensation for its claim:

Only after a subsequent specific request from the Office of Local Government for Hornsby Shire Council to make application under the Stronger Communities Fund was an application made for funding ... Hornsby Shire Council's application was made on the basis that any moneys received from the Stronger Communities Fund would only be a part payment on the total compensation to which Hornsby Shire Council was entitled.<sup>168</sup>

**3.41** A related grant to Parramatta City Council under the Stronger Communities Fund was also alleged to have been made to resolve issues arising from this boundary dispute. A grant of \$16 million was made to Parramatta City Council for improvements to Dence Park in Epping.<sup>169</sup> Media reports from July 2020 stated that Parramatta City Council claimed it was owed \$24 million in council rates collected by Hornsby Shire Council after some of Hornsby's land had been transferred to Parramatta.<sup>170</sup>

**3.42** Mr Hurst confirmed that, according to his recollection of events at the time, Parramatta City Council was suing Hornsby Council for over \$16 million. Hornsby Council refused to pay Parramatta as Hornsby believed it had been disadvantaged by the merger process and a planned merger with Ku-ring-gai Council that did not proceed.<sup>171</sup>

**3.43** Mr Hurst was asked whether the grant to Hornsby Shire Council was made as part compensation. Mr Hurst said he understood that there had been negotiations between Hornsby and Parramatta councils and the NSW Government but he was not part of these negotiations.<sup>172</sup> Mr Hurst further maintained that Parramatta's subsequent discontinuance of legal proceedings was 'not a consideration in making the payment of the grant to City of Parramatta'.<sup>173</sup>

**3.44** When Mr Crocker from the Premier's Office appeared before the committee he confirmed he had been in contact with Mr Head and noted that Hornsby Shire Council had 'provided a number of options' by which they would accept compensation, including funding a number of projects.<sup>174</sup>

**3.45** In November 2020, working advice notes from the Premier's Office were produced to the Legislative Council and tabled to this committee in December 2020 (the working advice notes are discussed in detail in the next chapter). These working advice notes reveal that one of the reasons for revising the guidelines had been to resolve the legal disputes between Hornsby Shire Council, Parramatta City Council and the NSW Government.<sup>175</sup>

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<sup>168</sup> Submission 16, Hornsby Shire Council, p 1.

<sup>169</sup> Evidence, Mr Hurst, 21 September 2020, p 70.

<sup>170</sup> Angus Thompson, 'State put up cash to settle council spat', *Sydney Morning Herald*, 7 July 2020, p 1.

<sup>171</sup> Evidence, Mr Hurst, 8 February 2021, p 50.

<sup>172</sup> Evidence, Mr Hurst, 21 September 2020, p 69.

<sup>173</sup> Evidence, Mr Hurst, 8 February 2021, p 51.

<sup>174</sup> Evidence, Mr Matthew Crocker, Former Policy Director, Office of the NSW Premier, 9 December 2020, pp 2-3.

<sup>175</sup> Return to order for papers, 25 November 2020, The Stronger Communities Fund – Further order, Document (7)(a)6, p 2. (See appendix 3).

## Adelong

- 3.46** The committee also received evidence regarding a number of grants made to Snowy Valleys Council for various projects in the town of Adelong worth a total of \$225,000. This was raised as the council is in the electorate of Wagga Wagga and the funding announcement was made a few weeks prior to the 2018 Wagga Wagga by-election.
- 3.47** According to a media release tabled to the committee, the funding was announced by the Premier on 17 August 2018.<sup>176</sup> However the funding agreement was not executed until 5 February 2019.<sup>177</sup>
- 3.48** Ms Laura Clarke, Former Deputy Chief of Staff in the Office of the Deputy Premier, confirmed that it was the role of the Deputy Premier to identify projects in Snowy Valleys Council as it was a regional council. However, she could not recall talking to the Premier's Office about any funding for Snowy Valleys Council.<sup>178</sup>
- 3.49** Further, Ms Clarke was asked how the grants to Adelong were announced in August 2018 when the funding agreement was not signed until 5 February 2019. Ms Clarke agreed that normally public announcements and media releases are not made until funding has been approved, but said this was a matter for the Office of Local Government.<sup>179</sup>
- 3.50** The committee also raised this matter with Mr Tony Harris, former NSW Auditor-General. Mr Harris viewed that the Premier must have approved the expenditure before making the statement and executing the agreement:

[T]he signing of an agreement several months later is, in one form, the commitment to incur expenditure. An announcement several months before is also a different kind of commitment to incur expenditure. Yes, I can see that the Premier must have approved the expenditure, in one sense of the word, before making that statement – and well before the agreement was executed.<sup>180</sup>

## The revised guidelines

- 3.51** The guidelines for the tied grants round of the Stronger Communities Fund were revised in order to change the eligibility and structure of the fund. The revised guidelines were the subject of particular controversy and a focus of both this committee and the Legislative Council throughout 2020. This section outlines when, why and how the guidelines were revised.
- 3.52** According to Mr Hurst, there were three sets of guidelines for the Stronger Communities Fund:
1. the original program guidelines

<sup>176</sup> Tabled document, Media release, *Going for tourism gold in historic Adelong*, 9 December 2020.

<sup>177</sup> Answers to questions on notice, Portfolio Committee No. 7 – Planning and Environment, Budget Estimates 2019-2020, Mr Hurst, 8 April 2020, Attachment 30.

<sup>178</sup> Evidence, Ms Laura Clarke, Former Deputy Chief of Staff, Office of the Deputy Premier, 9 December 2020, p 35.

<sup>179</sup> Evidence, Ms Clarke, 9 December 2020, p 36.

<sup>180</sup> Evidence, Mr Harris, 9 December 2020, pp 64-65.

2. guidelines for the tied grants round
3. a revised set of guidelines for the tied grants round.<sup>181</sup>

**3.53** The revised guidelines for the tied grant round were drafted by the Office of Local Government.<sup>182</sup> Two briefing notes written by the Office of Local Government tabled in the Legislative Council on 24 September 2020 record the process and reasons for revising the guidelines as well as Ministerial approval.<sup>183</sup> These briefing notes are available on the Parliament's website and are reproduced in Appendix 4.<sup>184</sup>

### **The revised guidelines**

**3.54** The first briefing note, entitled 'Approval of Stronger Communities Fund – tied grants round' sought approval for the establishment of and guidelines for the tied grants round. According to the briefing note, Cabinet had agreed to reallocate funds from the Stronger Communities Fund in 2017 and the guidelines needed to be revised in order to do so. Proposed new guidelines were attached to the briefing note which were 'modified to reflect the more specific focus on tied grant funding projects'.<sup>185</sup>

**3.55** The briefing note recommended the following:

1. The Minister note that a total of \$212.2 million is available to resolve all outstanding matters from the merger process, including but not limited to additional funding for new councils.
2. The Minister approve the proposed Stronger Communities Fund – tied grant round and proposed guidelines.
3. The Minister seek the endorsement of the Cabinet Standing Committee on Expenditure Review (ERC) or equivalent process for the proposed utilisation of the funds and guidelines, consistent with the decision of Cabinet.<sup>186</sup>

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<sup>181</sup> Evidence, Mr Hurst, 21 September 2020, p 43.

<sup>182</sup> Evidence, Portfolio Committee No. 7 – Planning and Environment, Budget Estimates 2019-2020, Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, 4 March 2020, p 66.

<sup>183</sup> *Minutes*, NSW Legislative Council, 24 September 2020, p 1392.

<sup>184</sup> Available at:

<https://www.parliament.nsw.gov.au/tp/files/78251/Approval%20of%20Stronger%20Communities%20Fund%20-%20Tied%20grant%20round%20-%2024%20September%202020.pdf>;  
<https://www.parliament.nsw.gov.au/tp/files/78252/Stronger%20Communities%20and%20New%20Council%20implementation%20guidelines%20-%2024%20September%202020.pdf>

<sup>185</sup> Return to order for papers, 24 September 2020, Approval of Stronger Communities Fund – tied grant round: Purpose: Seeking decision, pp 1-2. (See appendix 4).

<sup>186</sup> Return to order for papers, 24 September 2020, Approval of Stronger Communities Fund – tied grant round: Purpose: Seeking decision, p 1. (See appendix 4).

- 3.56** This briefing note was signed by Mr Hurst and the then Minister for Local Government on 4 September 2017, the Deputy Premier on 5 September 2017 and the Premier on 8 September 2017.<sup>187</sup>
- 3.57** The second briefing note, entitled 'Stronger Communities and New Council Implementation Fund guidelines' sought approval to modify the existing guidelines for the Stronger Communities Fund tied grants round and the New Council Implementation Fund. Proposed revised sets of guidelines for both funds were attached. This briefing note states that 'to give effect to the revised approach to implementing the Cabinet decision of 27 July 2017, the guidelines for the two grant programs need to be modified to change dates and eligibility'.<sup>188</sup>
- 3.58** This briefing note recommended the following:
1. The Minister note that \$140.84 million (out of an initial \$212.2 million) is available to resolve all outstanding matters from the merger process.
  2. The Minister approve the revised Stronger Communities Fund – tied grant round guidelines.
  3. The Minister approve the revised New Council Implementation Fund guidelines.
  4. The Minister seek the endorsement of the Premier and Deputy Premier to the proposed revised guidelines, consistent with Cabinet's decision.<sup>189</sup>
- 3.59** The revised guidelines, which were attached to the briefing note, state that the purpose of the Stronger Communities Fund tied grants round is to provide funding for specific projects, identified by the NSW Government, within the new councils and to councils previously subject to a merger proposal.<sup>190</sup>
- 3.60** This briefing note was signed by Mr Hurst on 12 June 2018, the Premier on 25 June 2018 and the former Minister for Local Government on 27 June 2018. The Deputy Premier's signature is undated.<sup>191</sup>
- 3.61** The Deputy Premier, the Hon John Barilaro MP indicated that 'it might have just been a misstep' when asked why his signature on the revised guidelines was not dated. Mr Barilaro was also asked whether any grants for the tied grants round were approved before the revised guidelines had been approved. Mr Barilaro responded: 'No. The guidelines would have been the reason that we would have changed the definition of the criteria, and no grants would have been able to be funded before this was signed, so of course I signed it, before'.<sup>192</sup>

<sup>187</sup> Return to order for papers, 24 September 2020, Approval of Stronger Communities Fund – tied grant round: Purpose: Seeking decision, p 2. (See appendix 4).

<sup>188</sup> Return to order for papers, 24 September 2020, Stronger Communities and New Council Implementation Fund guidelines: Purpose: Seeking decision, p 1. (See appendix 4).

<sup>189</sup> Return to order for papers, 24 September 2020, Stronger Communities and New Council Implementation Fund guidelines: Purpose: Seeking decision, p 1. (See appendix 4).

<sup>190</sup> Return to order for papers, 24 September 2020, Stronger Communities and New Council Implementation Fund guidelines: Purpose: Seeking decision, Attachment 1 'Stronger Communities Fund Guidelines – tied grant round', p 1. (See appendix 4).

<sup>191</sup> Return to order for papers, 24 September 2020, Stronger Communities and New Council Implementation Fund guidelines: Purpose: Seeking decision, p 2. (See appendix 4).

<sup>192</sup> Evidence, Mr Barilaro, 8 February 2021, p 23.

- 3.62** In response to questions about when the Deputy Premier had signed the revised guidelines, the Department of Regional NSW advised it had conducted a search of its records management system and could not find 'any records of ministerial advice on the Stronger Communities Fund guidelines'.<sup>193</sup>
- 3.63** According to Mr Hurst the revised guidelines were approved on 27 June 2018,<sup>194</sup> and the Office of Local Government 'began to make grants under those guidelines at that time'.<sup>195</sup>

### **Reason for revising the guidelines**

- 3.64** The committee heard evidence regarding why the guidelines had been changed.
- 3.65** An internal working advice note to the Premier (discussed in detail in chapter 4) noted that in order to fund a number of projects under the tied grants round, two revised funding guidelines would need to be approved. According to this note, 'minor changes' were made to the guidelines in order to:
- Enable funding to be provided to councils subject to a merger proposal, not just councils which were merged.
  - Enable additional implementation funding to be provided to regional councils, previously this was capped at \$5m.
  - Extend the timeframes for spending the funding by one year, so that councils will be required to spend or commit funding by end 2019, rather than end 2018.<sup>196</sup>
- 3.66** Mr Kevin Wilde, Former Chief of Staff in the Office of the Former Minister for Local Government, Ms Gabrielle Upton MP, added that the additional funds were available because not all planned council mergers had proceeded. He stated:
- ... [T]he Government's original plans for council mergers was not proceeded with so there were less mergers and consequently there was a decision by Cabinet to redistribute funds. So the guidelines for the fund were redone ...<sup>197</sup>
- 3.67** However, Mr Wilde stated that the decision to restructure the fund was a decision of Cabinet and he could not shed any light on how or who decided to change the guidelines.<sup>198</sup>
- 3.68** Mr Matthew Crocker, Former Policy Director, Office of the Premier, emphasised that the decision to expand eligibility to councils that had been the subject of a merger proposal was a decision of Cabinet. Mr Crocker said that his understanding of Cabinet's decision was that 'the

<sup>193</sup> Answers to questions on notice, Mr Chris Hanger, Deputy Secretary, Public Works Advisory and Regional Development, Department of Regional NSW, and Mr Jonathan Wheaton, Executive Director, Regional Programs, Department of Regional NSW, 12 November 2020, p 1.

<sup>194</sup> Answers to questions on notice, Mr Hurst, 22 October 2020, p 1.

<sup>195</sup> Evidence, Mr Hurst, 21 September 2020, p 43.

<sup>196</sup> Return to order for papers, 25 November 2020, The Stronger Communities Fund – Further order, Document (7)(a)6, p 2. (See appendix 3).

<sup>197</sup> Evidence, Mr Kevin Wilde, Former Chief of Staff, Office of the Former Minister for Local Government, 9 December 2020, p 44.

<sup>198</sup> Evidence, Mr Wilde, 9 December 2020, pp 40-41.

funding was to resolve outstanding issues from the merger process and support councils that needed additional support through funding of identified projects in those council areas'.<sup>199</sup>

- 3.69** Mr Crocker also stated that it was originally planned that projects would be announced in September 2017 and allocated funding by 30 June 2018. However, around April 2018, 'it became clear that time frames were not being met and that the Cabinet decision was not being implemented in a timely way' and from that point, the Premier's Office became involved.<sup>200</sup>

### **Eligibility under the revised guidelines**

- 3.70** The revised guidelines changed the eligibility for the Stronger Communities Fund, expanding eligibility from councils that had been merged to include councils that were previously subject to a merger proposal.<sup>201</sup> At the same time, the revised guidelines narrowed eligibility so that only councils that had a project identified by the NSW Government were eligible for funding.
- 3.71** According to the revised guidelines: 'Stronger Communities tied grants will be provided to new councils created in 2016 and councils previously subject to a merger proposal. Funding will be allocated by the NSW Government based on priorities identified by the NSW Government'.<sup>202</sup> Under the heading 'criteria for selecting projects', the guidelines state: 'Councils are to fund projects, identified by the NSW Government, that deliver new or improved infrastructure or services to the community'.<sup>203</sup>
- 3.72** In evidence to Portfolio Committee No. 7 in March 2020, Mr Hurst stated: 'councils who are eligible are councils who were merged in 2016 or subject to a merger proposal during that process' and noted that there were some councils that were eligible but did not receive funding.<sup>204</sup>
- 3.73** However, in evidence to this committee in September 2020, Mr Hurst indicated that only local councils in which a project had been identified by the NSW Government were eligible for funding under the revised guidelines, stating:

What I am suggesting is that just because there were a number of new councils created in 2016 and further councils who were subject to a merger proposal, that eligibility, in

<sup>199</sup> Evidence, Mr Crocker, 9 December 2020, p 2.

<sup>200</sup> Evidence, Mr Crocker, 9 December 2020, p 2.

<sup>201</sup> Return to order for papers, 24 September 2020, Stronger Communities and New Council Implementation Fund guidelines: Purpose: Seeking decision, Attachment 1 'Stronger Communities Fund Guidelines – tied grant round', p 1. (See appendix 4).

<sup>202</sup> Return to order for papers, 24 September 2020, Stronger Communities and New Council Implementation Fund guidelines: Purpose: Seeking decision, Attachment 1 'Stronger Communities Fund Guidelines – tied grant round', p 1. (See appendix 4).

<sup>203</sup> Return to order for papers, 24 September 2020, Stronger Communities and New Council Implementation Fund guidelines: Purpose: Seeking decision, Attachment 1 'Stronger Communities Fund Guidelines – tied grant round', p 1. (See appendix 4).

<sup>204</sup> Evidence, Portfolio Committee No. 7 – Planning and Environment, *Budget Estimates 2019-2020*, Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, 4 March 2020, p 65.

fact, turned on whether or not there was a project identified by the NSW Government for that council.<sup>205</sup>

- 3.74** When asked how this evidence corresponded with the evidence he provided in Budget Estimates, Mr Hurst clarified that all councils that had undergone a merger or were subject to a merger process were eligible to have projects identified in their area, but a council only became eligible once a project had been identified. Referring to a list provided to Budget Estimates of all councils that were merged or subject to a merger proposal, Mr Hurst stated:

... [T]hese were all councils which were eligible to have a government-identified project in their local government area but, as we have already identified, there was not an application-based process; that the projects were identified and advised to the council and, at that point, they were provided with a funding agreement.<sup>206</sup>

### **Publication of the revised guidelines**

- 3.75** The change in eligibility was not known publicly as the revised guidelines were not made publicly or widely available.
- 3.76** The revised guidelines were not published even though a working advice note prepared in the Premier's Office (discussed in detail in the next chapter) stated that, once finalised, the revised guidelines would be published on the Office of Local Government's website.<sup>207</sup>
- 3.77** Mr Hurst advised that the guidelines were provided to each council that received funding under the program as an attachment to the funding agreement.<sup>208</sup> He stated:

When I say they [the guidelines] were issued, we began to make grants under those guidelines at that time. The guidelines were of course provided as an attachment to the funding agreement provided to every council that was successful in that tranche of the funding.<sup>209</sup>

- 3.78** Mr Hurst confirmed that only councils that had been selected to receive funding were sent the funding agreements, which contained the guidelines.<sup>210</sup> This meant councils that had not had a project identified were not notified. For example, Mr Hurst stated: 'The reason that Canterbury-Bankstown was not notified is because we were not notified that there were any projects to be funded in their local government area'.<sup>211</sup>
- 3.79** Mr Hurst was asked why the revised guidelines had not been made widely available. In response, Mr Hurst argued that only councils that were eligible under the revised guidelines had to be

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<sup>205</sup> Evidence, Mr Hurst, 21 September 2020, p 58.

<sup>206</sup> Evidence, Mr Hurst, 21 September 2020, p 58.

<sup>207</sup> Return to order for papers, 25 November 2020, The Stronger Communities Fund – Further order, Document (7)(a)6, p 2. (See appendix 3).

<sup>208</sup> Evidence, Mr Hurst, 21 September 2020, pp 43; 51.

<sup>209</sup> Evidence, Mr Hurst, 21 September 2020, p 43.

<sup>210</sup> Evidence, Mr Hurst, 21 September 2020, p 59.

<sup>211</sup> Evidence, Mr Hurst, 21 September 2020, p 59.

provided with the guidelines,<sup>212</sup> and that the revised guidelines were not required to be published on the Office of Local Government website.<sup>213</sup>

**3.80** Local councils that did not receive funds under the tied grants round told the committee they had not been aware the guidelines had been revised or that there was additional funding available until media reports emerged around May 2020.<sup>214</sup> For example, Cr Khal Asfour, Mayor of City of Canterbury-Bankstown Council stated that the first he heard of the grant program was on Channel 9 News. He immediately rang his counterpart Cr Darcy Byrne, Mayor of Inner West Council, who was initially disbelieving and attempted to persuade him that the news could not be correct.<sup>215</sup>

**3.81** Cr Linda Scott, President of Local Government NSW, indicated that Local Government NSW was not consulted or informed about the changes to the guidelines. It was only advised of the first round of the fund and has no record of being advised of the tied grants round.<sup>216</sup> As they had never been informed of the change, Local Government NSW understood only local councils that had been merged were eligible for the fund, as per the first round:

... [T]here was very little information about how to apply for that particular grant. We certainly understood that the terms required councils that had been merged as part of the NSW Government's program of forced council mergers, to be the only eligible applicants.<sup>217</sup>

### Interpreting the guidelines

**3.82** Staff in the Office of the Premier informed the committee how the guidelines were used to select councils and projects.

**3.83** Mr Crocker indicated that the revised guidelines 'gave guidance about how the fund was to be administered' and that he believed the fund should be used to address three outstanding issues that had arisen from the council amalgamation program.<sup>218</sup> He advised Senior Policy Advisor, Ms Sarah Lau, to contact particular local councils on the basis of these outstanding issues.<sup>219</sup>

**3.84** Mr Crocker described the three outstanding areas as follows:

- ... [F]irstly, that there should be a focus on resolving significant outstanding issues from the merger process, which was predominantly the Hornsby council and Parramatta council issue;
- secondly, that there should be an equitable split between regional and metropolitan councils; and,

<sup>212</sup> Evidence, Mr Hurst, 21 September 2020, p 55.

<sup>213</sup> Answers to questions on notice, Mr Hurst, 22 October 2020, p 12.

<sup>214</sup> Evidence, Cr Byrne, 21 September 2020, p 16; Evidence, Cr Asfour, 21 September 2020, p 16.

<sup>215</sup> Evidence, Cr Asfour, 21 September 2020, pp 14; 16.

<sup>216</sup> Answers to questions on notice, Cr Linda Scott, President, Local Government NSW, 12 October 2020, p 1.

<sup>217</sup> Evidence, Cr Linda Scott, President, Local Government NSW, 21 September 2020, p 2.

<sup>218</sup> Evidence, Mr Crocker, 9 December 2020, p 5.

<sup>219</sup> Evidence, Mr Crocker, 9 December 2020, pp 14-15; 16.

- thirdly, given that councils that had taken legal action were having their costs paid for by the Government, those councils that had not taken legal action but spent council funds preparing for mergers that did not happen had a reasonable expectation of compensation.<sup>220</sup>

**3.85** The third category is particularly important. This referred to local councils that had spent money preparing for a merger but had not undergone the process and had not commenced legal action relating to a proposed merger. Mr Crocker stated that in his view, councils that had undergone mergers had received funding under the first round and were therefore considered to have been successfully merged. But councils that were subject to a merger that did *not* proceed had not yet been compensated for the money they had spent in preparation.<sup>221</sup> Mr Crocker explained as follows:

For the councils that had taken legal action, they were fully compensated for that legal action and those councils were not out of pocket. For the councils that had not taken legal action but had spent money on preparation - those councils, unless they received some form of compensation, those councils would have been worse off under this process, so they had a reasonable expectation of compensation.<sup>222</sup>

**3.86** When asked whether this third category was intended to exclude and punish councils that had challenged the merger process, such as Ku-ring-gai Council, Mr Crocker responded:

... [T]here was a category of councils that had expended ratepayers' money on preparing for a merger that did not happen. For councils such as Ku-ring-gai, they had spent ratepayers' money on legal action. They had recovered the cost of that legal action and that was not the case for other councils.<sup>223</sup>

**3.87** However, a working advice note in the Office of the Premier (discussed in detail in the next chapter) indicates there had been some discussion of withholding funding from at least one council as it had objected to a merger proposal. The note states:

I raised concerns with Min Roberts about rewarding Hunters Hill Council in light of the Council's legal action against the mergers, but Min Roberts has assured me this park is a key priority for the local community and is not being supported by the Council. On the basis that Lane Cove Council would now be received less funding, I suggest you support this funding for Hunters Hill Council.<sup>224</sup>

## Committee comment

**3.88** The committee uncovered deep and systematic problems with the Stronger Communities Fund tied grants round, all of which demonstrate the brazenly partisan nature and scale of this maladministration of funds. The round was worth \$252 million – two and half times more than

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<sup>220</sup> Evidence, Mr Crocker, 9 December 2020, p 2.

<sup>221</sup> Evidence, Mr Crocker, 9 December 2020, p 17.

<sup>222</sup> Evidence, Mr Crocker, 9 December 2020, p 10.

<sup>223</sup> Evidence, Mr Crocker, 9 December 2020, p 16.

<sup>224</sup> Return to order for papers, 25 November 2020, The Stronger Communities Fund – Further order, Document (7)(a)8, p 1. (See appendix 3).

the Federal sports rorts scandal. Of that \$252 million, 95 per cent – a total of \$241 million – went to Coalition-held or marginal electorates.

- 3.89** The committee is concerned with the timing of the overwhelming majority of the grants. In particular, grants to Snowy Valleys Council in the electorate of Wagga Wagga are particularly concerning as the grants were announced by the Premier just weeks prior to a by-election for the seat of Wagga Wagga in August 2018, but not executed for another six months. This committee was not given a satisfactory explanation of why this was the case.
- 3.90** The Stronger Communities Fund tied grants round was a clear abuse of ministerial power and of the grants process. The NSW Government handed out \$252 million of public money almost exclusively in Coalition and marginal seats in the lead up to the 2019 state election. This was an improperly partisan allocation of public money and falls well short of principles of proper grants administration and public expectations.
- 3.91** The committee condemns comments made by the Premier and Deputy Premier that pork-barrelling is part of the political process. This is an outrageous suggestion and an affront to their responsibilities as Ministers and to the people of New South Wales. Governments are elected to serve all citizens, not just those whose votes will ensure they stay in power. The assertion that pork-barrelling is somehow part of the election process does not hold up in the case of the Stronger Communities Fund tied grants round as the fund was not part of any election or prior commitment.
- 3.92** It is notable that the funding in question in this grants scheme happened immediately prior to a State election. At no time has there been any evidence before the committee that the expenditure of the \$252 million of the Stronger Communities Fund scheme was ever connected with an election promise and no public statement was made regarding the existence of the scheme. Indeed one of the remarkable features of this grants scheme was how little the public knew of it apart from the various local announcements of the projects that were being funded.
- 3.93** The Premier's apparent acceptance of pork-barrelling displays blatant disregard for the people of New South Wales and the principles of accountability and transparency that underpin public administration and democracy.
- 3.94** Further, the committee disputes the Premier's characterisation of election commitments as pork-barrelling, and grouping them with grants programs. Election commitments are promises to the electorate to deliver certain projects or funding. Grants programs are very different. They should be an opportunity for projects to fairly compete for funding, assessed against a set of criteria that is clear and publicly available, as outlined in Recommendation 5.

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### **Finding 1**

That the Stronger Communities Fund tied grants round was a clear abuse of the grants process. It was an improper allocation of public money and falls well short of principles of proper grants administration and public expectations.

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**Finding 2**

That, of the \$252 million allocated in the Stronger Communities Fund tied grants round, 95 per cent, which is a total of \$241 million, was allocated to councils in Coalition-held or marginal electorates.

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- 3.95** The Stronger Communities Fund exemplifies the potential for abuse of grant programs. It shows what happens when governments believe they have unfettered discretion to use public money for purely political gain and are not subject to rigorous oversight and mandatory requirements.
- 3.96** The largest grant made under the tied grants round was particularly concerning. \$90 million was given to the Liberal council of Hornsby Shire to resolve a legal issue between the council and the NSW Government. This was not only the largest but also the fastest grant made in the tied grants round and was made to a council that had not merged. In particular, the committee is concerned about the lack of any real application process and the speed with which the money was provided. The timing of the grant immediately after the signing of the revised guidelines is also troubling as it indicates the grant had been considered and potentially approved before the revised guidelines had been approved. The integrity of this grant will be considered further in the committee comment at the end of the next chapter.
- 3.97** The committee accepts the view of Hornsby Shire Council that they believed the grant was received as compensation for land lost as part of the forced amalgamation process. The committee found the evidence of the General Manager of Hornsby Shire Council to be credible, detailed and of great assistance. While the committee does not fault Hornsby Shire Council for accepting the money, it notes that Hornsby Council was also withholding \$16 million that Parramatta City Council claimed was due to them.
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**Finding 3**

That the grant of \$90 million to Hornsby Shire Council went against the original intent of the Stronger Communities Fund, was made without any due process or merit assessment, and was a misuse of public money by the NSW Government for a political purpose unrelated to the objects of the grants scheme.

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- 3.98** The revised guidelines were signed by the Minister for Local Government on 27 June 2018, the same date that Hornsby Shire Council was approached by the Office of Local Government and informed funding was available. The committee notes its concern that the Deputy Premier's signature on the revised guidelines is undated. The Deputy Premier did not provide a satisfactory explanation for this. Without more evidence the committee cannot make a final conclusion about when the revised guidelines were signed. Certainly evidence regarding the administration of other significant aspects of the fund do not instil confidence.
- 3.99** The revised guidelines were breathtakingly broad and were interpreted by Ministers' offices to suit their own purposes. Staff in the Premier's Office interpreted the guidelines according to what they argued was a decision of Cabinet. This allowed Ministers to identify projects they wanted to fund and enabled an unprecedented amount of discretion to effectively determine them.
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- 3.100** The provision of the revised guidelines that indicated 'Funding will be allocated by the NSW Government based on priorities identified by the NSW Government' was inappropriately broad. The ICAC submission draws attention to probity issues which can arise in a grants scheme, such as 'no eligibility or selection criteria, which might include absence of an evaluation methodology and weightings, or criteria that are vague or highly subjective'.<sup>225</sup>
- 3.101** In fact the guidelines for the tied grants round were revised to enable the pork-barrelling scheme. Documents produced to the Legislative Council, namely the approval briefs for the tied grants round and revised guidelines, as well as working advice notes created in the Premier's Office, reveal that the fund guidelines were revised in order to redirect funds from a legitimate grant scheme to particular councils and to resolve legal issues between Hornsby Shire Council and Parramatta City Council and the government. None of this was publicly acknowledged by either council or by the NSW Government.
- 3.102** It is also the committee's view that the Office of Local Government failed to publish the revised guidelines. The committee rejects evidence that the guidelines were published as they were only provided to funded councils as part of the funding agreement, once the grant had been approved. This is an unacceptably narrow definition of the term 'published' and falls far short of general principles of grant administration and community expectations.

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#### **Finding 4**

That the revised guidelines for the Stronger Communities Fund tied grants round were ambiguous and did not identify with enough specificity the designated decision-maker or how projects would be identified or approved.

#### **Finding 5**

That the guidelines for the Stronger Communities Fund tied grants round were deliberately devised to accommodate the pork-barrelling scheme in order to:

- partially resolve certain legal disputes involving Hornsby Shire Council and Parramatta City Council
- win favour with the public in Coalition and marginal seats ahead of the 2019 state election
- punish local councils that had objected to forced amalgamation proposals.

#### **Finding 6**

That the Office of Local Government failed to publish the revised guidelines for the Stronger Communities Fund tied grants round.

- 3.103** The lack of a designated decision-maker in the guidelines was particularly alarming. This made it hard for the committee to determine who was responsible for approving projects and who in fact approved projects (discussed in the next chapter).
- 3.104** The committee therefore recommends that all grant program must have, as an absolute minimum, a designated decision-maker and process for identifying and assessing proposed

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<sup>225</sup> Submission 92, Independent Commission Against Corruption, p 13.

projects. The decision-maker and assessment process should be set out in clear, detailed and publicly available guidelines that also set out clear and detailed eligibility criteria.

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**Recommendation 5**

That the NSW Government ensure all grant programs have, as an absolute minimum, the following legally binding and mandatory elements:

- a designated decision-maker
  - eligibility criteria
  - a process for identifying and assessing proposed projects against those criteria
  - program guidelines that are clear, detailed and publicly available.
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## Chapter 4 Administration of the Stronger Communities Fund

Chapter 3 examined the design of the Stronger Communities Fund tied grants round and revised guidelines. This chapter explores issues with how the funding round was administered. It considers the lack of application and assessment process in the Office of Local Government and how projects were identified by Ministerial staff. It then examines differing evidence about project approvals. Finally, the chapter sets out concerns with the administration of the fund raised by the Independent Commission Against Corruption, the Auditor-General and the former Auditor-General.

### Administration of the fund by the Office of Local Government

- 4.1 The committee received evidence that there was no application or assessment process for the tied grants round by the Office of Local Government, nor was any other appropriate assessment process carried out in any other part of government. Projects were identified by the relevant Ministerial offices to Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, who then approved the payments.

#### *Lack of application process*

- 4.2 Mr Hurst informed the committee that 'there was no funding application for the tied grants round'.<sup>226</sup> He agreed that the funding agreements provided to councils each contained an attachment entitled 'grant application form', but denied that they were in fact application forms. Instead he argued that the attachments 'could more properly be characterised as part of the funding agreement' as 'legally part of a single document, which is a deed between the council and the Office of Local Government to receive the funding and use it for the specified purposes'.<sup>227</sup>
- 4.3 Mr Hurst argued that not all grants contain an application process and suggested that it can be unnecessary. Mr Hurst gave the example of almost \$800 million distributed each year in financial assistance grants by the Office of Local Government (which are determined under a statutory and invariable formula), stating: 'I cannot imagine what purpose, apart from creating red tape, would be served by requiring councils to prepare application forms for financial assistance grants'.<sup>228</sup>

#### *Lack of assessment process*

- 4.4 Mr Hurst also indicated that the Office of Local Government did not undertake an assessment of the identified projects against each other, or for merit. He stated in Budget Estimates in March 2020: 'There was not an assessment as such, but each council who applied was a council

<sup>226</sup> Evidence, Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, 21 September 2020, p 44.

<sup>227</sup> Evidence, Mr Hurst, 21 September 2020, p 44.

<sup>228</sup> Evidence, Mr Hurst, 21 September 2020, p 54.

who was eligible'.<sup>229</sup> The assertion being that no council was 'eligible' for a grant until they had in fact received a grant. The former Auditor-General Mr Tony Harris considered this issue in his evidence which will be considered later in this report.

**4.5** In evidence to this committee Mr Hurst described how the Office of Local Government issued funding agreements to councils, stating: 'as we have already identified, there was not an application-based process; that the projects were identified and advised to the council and, at that point, they were provided with a funding agreement'.<sup>230</sup>

**4.6** Mr Hurst went on to confirm that the role of the Office of Local Government in administering the program was limited to notifying councils that they would be receiving funds:

... [T]he role of the Office of Local Government in administering the grants is that we notified the councils that we were told were being provided with a grant within their local government area. That is the job of the Office of Local Government in administering the program.<sup>231</sup>

**4.7** Mr Hurst further noted that 'the Office of Local Government [had] no role in the assessment or recommendation of projects for funding or otherwise'.<sup>232</sup>

**4.8** In a letter dated 19 October 2020 addressed to the Clerk of the Parliaments, Mr Hurst outlined the process the Office of Local Government undertook in the administration of the tied grants round. This letter states that the revised guidelines provided that funds would be spent on projects identified by the NSW Government and that either then Minister for Local Government or Mr Hurst under delegated authority approved this expenditure:

Ministers and public servants are able to expend funds under delegation, and the process of decision making, documenting decision making, and payment differs between grants programs. In relation to the Stronger Communities Fund – tied grants round, the Guidelines for the program provided that funds would be expended on projects identified by the NSW Government.

For each grant a briefing note authorising the particular expenditure was prepared for and signed by either the Minister for Local Government, or me under delegated authority from the Minister for Local Government under section 12 of the *Public Finance and Audit Act 1983*. Confirmation of projects having been identified by the NSW Government, as set out in the Guidelines, was attached to the respective briefing note in the form of emails from Minister's staff.<sup>233</sup>

**4.9** Mr Hurst appeared again before the committee in February 2021. At this hearing he repeatedly confirmed his previous evidence to the committee and that the process had been set out in the

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<sup>229</sup> Evidence, Portfolio Committee No. 7 – Planning and Environment, Budget Estimates 2019-2020, Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, 4 March 2020, p 65.

<sup>230</sup> Evidence, Mr Hurst, 21 September 2020, p 58.

<sup>231</sup> Evidence, Mr Hurst, 21 September 2020, p 59.

<sup>232</sup> Evidence, Mr Hurst, 21 September 2020, p 62.

<sup>233</sup> Tabled document, *Correspondence from Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, to the Clerk of the Parliaments, dated 19 October 2020, 23 October 2020.*

above letter.<sup>234</sup> When asked whether his office assessed projects for their merit or quality, Mr Hurst confirmed that 'was not part of the process that the Office of Local Government followed'.<sup>235</sup>

- 4.10** Mr Hurst noted that there was only one occasion where a project was identified by either the Premier, the Deputy Premier or the Minister for Local Government that he did not issue grant funding. This was a project in Murray River Shire Council identified by the Office of the Deputy Premier. Mr Hurst confirmed that this project had not complied with the guidelines as it was for a fit-out of council administration offices.<sup>236</sup>
- 4.11** In addition, Mr Hurst stated that the Office of Local Government did not undertake any probity checks or assessments of the Stronger Communities Fund tied grants round. When asked if the Office of Local Government has a process of conducting probity assessment of large grant funds, Mr Hurst stated: 'The process is that we give money to councils' and argued that local councils are subject to a different regulatory framework.<sup>237</sup>

## Identification of projects

- 4.12** Evidence to the committee suggests that projects were identified by staffers in the Premier and Deputy Premier's Offices. These staffers asked government MPs to propose projects for funding. Staffers then put these proposed projects to their relevant Minister, verbally to the Deputy Premier and through 'working advice notes' to the Premier. The working advice notes were destroyed but reconstituted copies were obtained by the committee.

### Input from Government MPs

- 4.13** As noted in the previous chapter, the committee received evidence that ministerial offices identified projects to be funded under the tied grants round by contacting local Government members.
- 4.14** Ms Sarah Lau, Senior Policy Advisor in the Office of the Premier, said that she was advised by Mr Matthew Crocker, the Premier's Office Policy Director at the time, to ask the parliamentary liaison team to consult with relevant local members of parliament. She stated:

My former policy director then asked me to speak to our parliamentary liaison team in the office to ask them to consult with relevant local MPs and for them to in turn speak to their relevant local councils that were proposed to receive funding, about possible projects that could be funded within the proposed allocated funding. Those projects would have come from the relevant local councils.<sup>238</sup>

<sup>234</sup> Evidence, Mr Hurst, 8 February 2021, pp 34; 36; 38; 42.

<sup>235</sup> Evidence, Mr Hurst, 8 February 2021, p 40.

<sup>236</sup> Evidence, Mr Hurst, 8 February 2021, pp 42; 44.

<sup>237</sup> Evidence, Mr Hurst, 8 February 2021, pp 52-53.

<sup>238</sup> Evidence, Ms Sarah Lau, Senior Policy Advisor, Office of the Premier, 23 October 2020, p 7.

**4.15** Ms Lau was asked to confirm whether the projects were suggested by local councils or by relevant local MPs. Ms Lau responded: 'From the local councils via the local MPs'.<sup>239</sup> Ms Lau also noted that she spoke directly to some ministers' offices about potential projects,<sup>240</sup> and that her manager, Mr Crocker, had advised her about the grant to Hornsby Council (see the previous chapter for more detail on this grant).<sup>241</sup>

**4.16** Mr Crocker confirmed he had advised Ms Lau about how eligible projects should be identified, stating:

One of the challenges was to identify those projects in council areas. So I suggested to Ms Lau that she talk to the parliamentary liaison team to find people who have relevant contacts with the relevant affected councils, who might be able to provide some advice on appropriate projects in those areas.<sup>242</sup>

**4.17** When identifying projects, Mr Crocker confirmed that the parliamentary liaison team talked to government MPs only. He stated:

... [M]y advice to Ms Lau was in this case, councils which were subject to merger proposals but were not merged had a reasonable expectation of compensation. If you looked at the nature of those councils and the electorates that those councils covered, they were predominantly councils which at that time were either held by Coalition MPs or joint Coalition and Labor MPs, so it seems like a reasonable way to connect with the councils.<sup>243</sup>

**4.18** Ms Laura Clarke, former Deputy Chief of Staff in the Office of the Deputy Premier said that she too consulted only with Coalition MPs in identifying regional projects but could not recall why she was told to do so.<sup>244</sup> For example, Ms Clarke described the process of identifying projects in the Central Coast Council as follows:

[T]he office ... spoke to local MPs about putting forward projects. A number of projects were put forward from the local member, Mr Crouch, and those were passed on to the Office of Local Government, as requested.<sup>245</sup>

### **Working advice notes**

**4.19** The committee heard evidence that the Premier was informed of projects to be funded via 'working advice notes' which were later destroyed. Ms Sarah Lau, Senior Policy Officer in the Office of the Premier, described how she communicated about projects to be funded as follows:

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<sup>239</sup> Evidence, Ms Lau, 23 October 2020, p 7.

<sup>240</sup> Evidence, Ms Lau, 23 October 2020, p 13.

<sup>241</sup> Evidence, Ms Lau, 23 October 2020, p 7.

<sup>242</sup> Evidence, Mr Matthew Crocker, Former Policy Director, Office of the NSW Premier, 9 December 2020, p 5.

<sup>243</sup> Evidence, Mr Crocker, 9 December 2020, pp 5-6.

<sup>244</sup> Evidence, Ms Laura Clarke, Former Deputy Chief of Staff, Office of the Deputy Premier, 9 December 2020, pp 22; 37-38.

<sup>245</sup> Evidence, Ms Clarke, 9 December 2020, p 20.

I had advised her [the Premier] of the proposed list of councils to be funded and the proposed projects. I had done that as part of a working advice note and she had indicated on that note that she was comfortable. I cannot recall exactly how she had done that but I made a record of the outcome of that note by sending an email to Mr Hurst.<sup>246</sup>

- 4.20** Ms Lau argued the working advice notes did not constitute formal funding briefs. Instead, she described them as 'really in the place of what could have really been a short conversation with the Premier'.<sup>247</sup>
- 4.21** Ms Sarah Cruickshank, Former Chief of Staff, Office of the Premier, confirmed that in her view, a working advice note was not a formal briefing note, but could be described as 'simply the relevant advisor's views on something'. Ms Cruickshank noted further that 'normally a piece of advice like that, which is just an office-generated piece of advice, might accompany a formal brief'.<sup>248</sup>
- 4.22** According to Mr Crocker, the purpose of the working advice notes was 'to make sure that the Premier was aware of the support that we were giving in terms of this program'.<sup>249</sup>
- 4.23** Ms Lau said that she had likely created two 'working advice notes' for the Premier's consideration.<sup>250</sup> The Premier then 'indicated on that note that she was comfortable' with the list of projects and councils and Ms Lau informed the Office of Local Government by email.<sup>251</sup>
- 4.24** Neither Ms Lau nor her manager, Mr Crocker, could recall how the Premier had indicated she was comfortable with the projects; whether this was verbal or by a notation such as a circle or tick on the working advice notes.<sup>252</sup> Ms Lau stated: 'I cannot recall exactly what she [the Premier] wrote. I mean, she may have, say, just ticked the note, for instance'.<sup>253</sup>
- 4.25** No working advice notes were created in the Deputy Premier's Office. Ms Clarke told the committee that the Office of the Deputy Premier did not have any paperwork indicating which projects were selected or where the money was allocated.<sup>254</sup> Ms Clarke advised that she received indications of projects from local MPs and councils and then communicated these verbally to the Deputy Premier before emailing the Office of Local Government.<sup>255</sup> She later confirmed that at no point were any recommendations, reasons or alternative policy options put in writing to the Deputy Premier.<sup>256</sup>

<sup>246</sup> Evidence, Ms Lau, 23 October 2020, pp 2-3.

<sup>247</sup> Evidence, Ms Lau, 23 October 2020, p 3.

<sup>248</sup> Evidence, Ms Sarah Cruickshank, Former Chief of Staff, Office of the Premier, 23 October 2020, p 5.

<sup>249</sup> Evidence, Mr Crocker, 9 December 2020, p 12.

<sup>250</sup> Evidence, Ms Lau, 23 October 2020, p 6.

<sup>251</sup> Evidence, Ms Lau, 23 October 2020, pp 2-3.

<sup>252</sup> Evidence, Ms Lau, 23 October 2020, pp 3-4; Evidence, Mr Crocker, 9 December 2020, p 12.

<sup>253</sup> Evidence, Ms Lau, 23 October 2020, p 4.

<sup>254</sup> Evidence, Ms Clarke, 9 December 2020, p 20.

<sup>255</sup> Evidence, Ms Clarke, 9 December 2020, p 19.

<sup>256</sup> Evidence, Ms Clarke, 9 December 2020, pp 31-32.

***Destruction of the working advice notes***

- 4.26** The working advice notes had not been produced to the Legislative Council under standing order 52 and came as new information to the committee when discussed by Ms Lau during evidence in October 2020. When questioned about this, Ms Lau told the committee she had destroyed the notes as part of 'normal record management practices'.<sup>257</sup>
- 4.27** Ms Lau said that hard copies of the working advice notes had likely been shredded but could not recall when this had happened.<sup>258</sup> She said that electronic copies of the documents were no longer available and believed she had deleted them.<sup>259</sup>
- 4.28** Ms Lau argued that the notes had been disposed of as part of normal record management practices and that her emails to Mr Hurst were a comprehensive record of their contents, stating:

... [A]fter the Premier indicated that she was comfortable with the proposed projects and the funding allocation I sent emails to the Office of Local Government recording that information. Those emails to the Office of Local Government were and are a comprehensive electronic record of the Premier's confirmation that she was comfortable. I then disposed of those working advice notes that I had used to prepare that fund record – those emails – in line with my normal record management practices.<sup>260</sup>

- 4.29** While Ms Lau accepted her emails did not duplicate the working advice notes, she argued that 'they were a record of the outcome of my advice notes' and therefore sufficient for record-keeping requirements.<sup>261</sup>
- 4.30** Ms Sarah Cruickshank, former Chief of Staff in the Office of the Premier, supported the proposition that the working advice notes could permissibly be destroyed if the emails served as a full and comprehensive record of their contents. She stated:

... there is a combination of documents that can be regarded as State records, and you are not required to keep duplicates. So if the final record in this particular scenario is the email, that would be in accordance with State records.<sup>262</sup>

- 4.31** However, Ms Cruickshank advised she had not seen the working advice notes in question and said that ultimately 'it would come down to what the content of an advice note looked like'.<sup>263</sup>

***Content of the reconstituted working advice notes***

- 4.32** As noted in chapter 1, the Legislative Council ordered that the deleted electronic copies of the working advice notes be reconstituted from backups and produced under standing order 52.

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<sup>257</sup> Evidence, Ms Lau, 23 October 2020, p 5.

<sup>258</sup> Evidence, Ms Lau, 23 October 2020, p 5.

<sup>259</sup> Evidence, Ms Lau, 23 October 2020, p 9.

<sup>260</sup> Evidence, Ms Lau, 23 October 2020, p 5.

<sup>261</sup> Evidence, Ms Lau, 23 October 2020, pp 9-10; 12.

<sup>262</sup> Evidence, Ms Cruickshank, 23 October 2020, p 9.

<sup>263</sup> Evidence, Ms Cruickshank, 23 October 2020, p 10.

- 4.33** Three recovered working advice notes were produced to the Legislative Council,<sup>264</sup> and two of these, containing lists of projects to be funded, were later tabled to the committee. These working advice notes are reproduced in Appendix 3.<sup>265</sup> The detail contained in these notes indicates that the Premier was being asked to approve funding for projects and that the Deputy Premier was also approving funding.
- 4.34** The first note contains a table listing seven local councils and proposed projects, along with how much was to be allocated to each project and council. The table also lists which MPs were consulted.<sup>266</sup>
- 4.35** As well as projects listed in the table, this working advice note contains details about the grants to Hornsby Shire and Parramatta City councils. In relation to these grants, the note states that \$90 million has been allocated for two projects in Hornsby Shire Council and that 'the Office of Local Government is working on the funding agreement for these projects and I expect Min Kean will announce them shortly'.<sup>267</sup> This potentially indicates the funding agreements had been prepared prior to the approval of the project as well as the approval of the revised guidelines.
- 4.36** In relation to the Parramatta grant, the working advice note recommends the Premier approve \$16 million in grants to Parramatta City Council in order to resolve a legal dispute between Parramatta and Hornsby Councils, stating:
- We also recommend you approve \$16m for a new aquatic facility and water play park in the Epping area for Parramatta City Council. This funding is broadly equivalent to the s.94 contributions owed to them by Hornsby Council. Parramatta has indicated they will consider dropping their legal action on the s.94 contributions owed to them if this funding is provided.<sup>268</sup>
- 4.37** The note also outlines that guidelines for the Stronger Communities Fund and New Council Implementation Fund would need to be revised and approved 'to enable this funding to go out' and states: 'These guidelines will also cover the \$61.5m in funding for the 11 merged regional councils. The DP's [Deputy Premier's] Office is currently finalising the allocation of these funds'.<sup>269</sup>
- 4.38** The working advice note contains the following two recommendations:
- Approve the proposed funding at Table 1 for open spaces projects for metro local councils and \$16m for a new aquatic facility and water play park for Parramatta City Council.

<sup>264</sup> *Minutes*, NSW Legislative Council, 16 February 2021, p 1897.

<sup>265</sup> Return to order for papers, 25 November 2020, The Stronger Communities Fund – Further order, Document (7)(a)6; (7)(a)8. (See appendix 3).

<sup>266</sup> Return to order for papers, 25 November 2020, The Stronger Communities Fund – Further order, Document (7)(a)6, pp 1-2. (See appendix 3).

<sup>267</sup> Return to order for papers, 25 November 2020, The Stronger Communities Fund – Further order, Document (7)(a)6, p 2. (See appendix 3).

<sup>268</sup> Return to order for papers, 25 November 2020, The Stronger Communities Fund – Further order, Document (7)(a)6, p 2. (See appendix 3).

<sup>269</sup> Return to order for papers, 25 November 2020, The Stronger Communities Fund – Further order, Document (7)(a)6, p 2. (See appendix 3).

- Sign the attached brief approving the updated funding guidelines for the local council merger funds.<sup>270</sup>

- 4.39** The second working advice note contains a table listing five councils and projects to be funded and recommends that the Premier: 'Approve the proposed funding ... for metro local councils to be funded from remaining local government merger funds'.<sup>271</sup>
- 4.40** This note lists a number of changes to projects listed in the first working advice note and contains an update on the Parramatta grant, stating: 'Parramatta Council has confirmed they will halt their legal action against Hornsby Council re s.94 contributions on the basis they will receive \$16m in funding for a pool upgrade in the Epping area'.<sup>272</sup>
- 4.41** The note further records that the projects listed, along 'with the previously approved projects' come to just under \$79 million and that 'the DP's [Deputy Premier's] Office is also working at finalising their allocated funding for the merged regional councils'.<sup>273</sup>

***External investigations into the destruction of the working advice notes***

- 4.42** The Information and Privacy Commission and the State Archives and Records Authority carried out their own investigations into the destruction of the working advice notes.
- 4.43** On 21 January 2021, it was reported in the media that the Information and Privacy Commission found that the Premier's Office had not breached the *Government Information (Public Access) Act 2009* and had provided its report to the Independent Commission Against Corruption.<sup>274</sup>
- 4.44** The next day, being late on a Friday, the State Archives and Records Authority (SARA) released its report on the status and destruction of the working advice notes and record-keeping practices in the Office of the Premier.<sup>275</sup>
- 4.45** SARA found that the working advice notes used in relation to the Stronger Communities Fund were formal briefing notes and that the Office of the Premier had breached section 21 of the

<sup>270</sup> Return to order for papers, 25 November 2020, The Stronger Communities Fund – Further order, Document (7)(a)6, p 3. (See appendix 3).

<sup>271</sup> Return to order for papers, 25 November 2020, The Stronger Communities Fund – Further order, Document (7)(a)8, p 2. (See appendix 3).

<sup>272</sup> Return to order for papers, 25 November 2020, The Stronger Communities Fund – Further order, Document (7)(a)8, p 1. (See appendix 3).

<sup>273</sup> Return to order for papers, 25 November 2020, The Stronger Communities Fund – Further order, Document (7)(a)8, p 1. (See appendix 3).

<sup>274</sup> Tom Rabe, 'NSW Premier's office clear of breach after shredding documents', *Sydney Morning Herald*, 21 January 2021.

<sup>275</sup> The State Archives and Records Authority report was provided to the committee and published on the inquiry website. It is available at:

<https://www.parliament.nsw.gov.au/lcdocs/other/14049/Report%20-%20State%20Records%20Authority%20-%20Disposal%20of%20records%20re%20Stronger%20Communities%20Fund.pdf>.

*State Records Act 1998* by destroying them.<sup>276</sup> Its report states that 'Working advice notes are State records and are subject to the retention and disposal obligations of the *State Records Act*'.<sup>277</sup>

- 4.46 SARA therefore found that the working advice notes were subject to the *General retention and disposal authority GDA13: Minister's Office records* and should not have been destroyed:

GDA13 requires that "Briefing notes or papers maintained in the Premier's Office" are to be retained permanently as State archives. The working advice notes in question were created within the Office of the Premier, used functionally as briefing notes, and were then maintained in the Office of the Premier, directing further and subsequent related action. It follows that these working advice notes should not have been destroyed and that they should have been retained as State archives ...<sup>278</sup>

- 4.47 SARA noted further that emails sent to the Office of Local Government were not sufficient as the final version of the record as they 'did not contain all relevant aspects of the working advice note, such as any comments or annotations made by the Chief of Staff and/or the Premier or reasons for the decisions being made ...'<sup>279</sup>

- 4.48 SARA also commented on record-keeping practices in the Office of the Premier and noted that the *Ministers' Office Handbook* 'contains no explicit advice to guide practices for the creation, capture, management or disposal of working advice notes or briefing notes'. In this context, SARA noted that 'the general nature of the advice in the Handbook, and the absence of any other system in place to provide more specific guidance, may have resulted in staff misunderstanding obligations and led to unauthorised disposal ...'<sup>280</sup>

- 4.49 SARA stated further:

The Authority recognises the cooperation of the Office of the Premier in assisting it to establish this context and providing information about the practices of the Office at the times in question.

...

<sup>276</sup> NSW State Archives and Records Authority 'Recordkeeping Assessment: Matter raised by Mr Greg Warren MP: Alleged non-compliant disposal of records relating to the Stronger Communities Fund', 21 January 2021, p 14.

<sup>277</sup> NSW State Archives and Records Authority 'Recordkeeping Assessment: Matter raised by Mr Greg Warren MP: Alleged non-compliant disposal of records relating to the Stronger Communities Fund', 21 January 2021, p 14.

<sup>278</sup> NSW State Archives and Records Authority 'Recordkeeping Assessment: Matter raised by Mr Greg Warren MP: Alleged non-compliant disposal of records relating to the Stronger Communities Fund', 21 January 2021, p 15.

<sup>279</sup> NSW State Archives and Records Authority 'Recordkeeping Assessment: Matter raised by Mr Greg Warren MP: Alleged non-compliant disposal of records relating to the Stronger Communities Fund', 21 January 2021, p 15.

<sup>280</sup> NSW State Archives and Records Authority 'Recordkeeping Assessment: Matter raised by Mr Greg Warren MP: Alleged non-compliant disposal of records relating to the Stronger Communities Fund', 21 January 2021, p 16.

The Authority acknowledges the high level of risk associated with the profile and functions of the Office of the Premier...<sup>281</sup>

**4.50** The following table sets out the full list of findings and recommendations of the SARA report.<sup>282</sup>

**Table 3 State Archives and Records Authority - Finding and Recommendations**

Finding 1	The Authority finds that the Office of the Premier breached section 21(1) of the State Records Act with the unauthorised disposal of the working advice notes.
Finding 2	The Authority finds that the records management information in the <i>Ministers' Office Handbook</i> does not adequately support ministerial staff in their creation, capture, management and disposal of State records (and, consequently, their retention of State archives).
Finding 3	The Authority finds that the monitoring of records management in the Office of the Premier was insufficient and could not appropriately provide management assurance of compliance with records management obligations.
Finding 4	The Authority did not establish that disposal actions taken in regard to working advice notes were the result of explicit instruction by any staff member within the Office of the Premier.
Recommendation 1	Develop and formalise a records management program which would include: <ul style="list-style-type: none"> <li>(a) a records management policy, which provides the framework for records management and recordkeeping in ministerial offices, articulates the obligations of and requirements for ministerial staff, and better supports ministerial staff in understanding their recordkeeping requirements;</li> <li>(b) detailed advice and support for ministerial staff on the creation, capture, management and disposal of records with a focus on reducing any ambiguity or misunderstanding (e.g. treatment of 'working advice notes', 'briefing notes', 'working papers' and 'drafts');</li> <li>(c) training opportunities for ministerial staff to support compliant recordkeeping within their office's practices, procedures and policies;</li> </ul>

<sup>281</sup> NSW State Archives and Records Authority 'Recordkeeping Assessment: Matter raised by Mr Greg Warren MP: Alleged non-compliant disposal of records relating to the Stronger Communities Fund', 21 January 2021, p 3.

<sup>282</sup> NSW State Archives and Records Authority 'Recordkeeping Assessment: Matter raised by Mr Greg Warren MP: Alleged non-compliant disposal of records relating to the Stronger Communities Fund', 21 January 2021, pp 2-3.

	<p>(d) regular monitoring of recordkeeping within ministerial offices and the conformity of staff with their recordkeeping requirements;</p> <p>(e) appropriate technology or systems to support the above recommended actions.</p>
Recommendation 2	Update the <i>Ministers' Office Handbook</i> to provide more detailed information to ministerial staff on their recordkeeping responsibilities and practices.
Recommendation 3	Work with the Authority and its Board to update the <i>General retention and disposal authority GDA13: Ministers' Office records</i> .

**4.51** In evidence to Portfolio Committee No. 1 as part of Budget Estimates in March 2021, the Premier accepted the findings of SARA that destroying the working advice notes constituted a technical breach of the Act but argued that SARA had 'attributed what occurred to ambiguity in existing processes'.<sup>283</sup> The Premier noted further that she accepted the recommendations of their report and that her office was working with SARA to eliminate any ambiguity regarding what constitutes a state record.<sup>284</sup>

## Project approvals

**4.52** The committee received conflicting evidence about who was responsible for determining which projects were to be funded and who in fact determined each project.

**4.53** Under the revised guidelines, Mr Tim Hurst, as the Chief Executive Officer of the Office of Local Government, was responsible for executing financial payments under delegation to successful local councils. The former Minister for Local Government, Ms Gabrielle Upton MP, was also responsible for approving some projects. However, while all witnesses appeared to agree that Mr Hurst was largely responsible for preparing funding agreements and authorising expenditure, the committee received conflicting evidence about who was responsible for selecting and approving projects and deciding how much funding the selected councils would receive.

### Office of Local Government evidence

#### *Responsibility for project approvals*

**4.54** In evidence to Portfolio Committee No. 7 in March 2020, Mr Hurst implied that he did not make the final decisions about which projects and councils were to be funded. When asked who determined which projects would be funded and for how much, Mr Hurst replied that the role

<sup>283</sup> Evidence, Portfolio Committee No. 1 – Premier and Finance, Budget Estimates 2020-2021, The Hon Gladys Berejiklian MP, Premier, 4 March 2021 (uncorrected transcript), p 30.

<sup>284</sup> Evidence, Portfolio Committee No. 1 – Premier and Finance, Budget Estimates 2020-2021, Ms Berejiklian, 4 March 2021 (uncorrected transcript), p 32.

of the Office of Local Government was limited to executing funding agreements and making payments, stating:

I cannot answer that question. I can only advise that we were told the councils to pay and the projects, and the Office of Local Government prepared the agreements, sent them to councils, executed them and paid the funds.<sup>285</sup>

**4.55** Mr Hurst described the role of the Office of Local Government as purely administrative, stating:

The Office of Local Government was advised the councils and the projects. Our role was to administer the grants by drafting and then executing the funding agreements and making the payments to the councils.<sup>286</sup>

**4.56** In evidence to this inquiry, Mr Hurst agreed that he approved the financial allocation by executing the funding agreement but was not the grant decision-maker. He stated that the decision-maker was 'always a Minister in the Government'.<sup>287</sup> He again explained the role the Office of Local Government played as limited to making payments and issuing agreements:

... [W]e were advised of the successful projects that the decision-maker had agreed to fund. We then took the actions to proceed with developing the agreement, issuing the agreement, having it returned and making the payment to the council. That is the Office of Local Government's role in administering the program.<sup>288</sup>

**4.57** When asked who determined each project, Mr Hurst indicated that: 'Of the \$252 million total in the tied grants round, \$141.8 million was allocated by the Premier, \$61.3 million was allocated by the Deputy Premier, and \$48.9 million was approved by the Minister for Local Government'.<sup>289</sup>

**4.58** Mr Hurst provided a table to the committee detailing when each council had a project identified for funding under the tied grants round and how much funding each council had been provided. (This table is reproduced in Appendix 5.) According to this table, projects were identified by either the Premier, Deputy Premier or Minister for Local Government and conveyed to the Office of Local Government by their staff.<sup>290</sup>

### ***Formal funding briefs***

**4.59** Mr Hurst indicated that the Office of Local Government did not prepare funding briefs for the approved projects. When asked whether signed approvals for each of the proposed projects existed, he stated:

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<sup>285</sup> Evidence, Portfolio Committee No. 7 – Planning and Environment, Budget Estimates 2019-2020, Mr Hurst, 4 March 2020, p 66.

<sup>286</sup> Evidence, Portfolio Committee No. 7 – Planning and Environment, Budget Estimates 2019-2020, Mr Hurst, 4 March 2020, p 65.

<sup>287</sup> Evidence, Mr Hurst, 21 September 2020, p 46.

<sup>288</sup> Evidence, Mr Hurst, 21 September 2020, p 62.

<sup>289</sup> Answers to questions on notice, Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, 22 October 2020, p 2.

<sup>290</sup> Answers to questions on notice, Mr Hurst, 22 October 2020, pp 3-5.

What we have is guidance that the relevant minister has made a decision to issue those amounts to those councils for those purposes ...

...

[T]he Office of Local Government did not prepare a brief for these matters. We were advised of the relevant projects, the council and the amount.<sup>291</sup>

- 4.60** Mr Hurst confirmed that the funding agreements he signed for each project did not constitute formal funding briefs as they did not record decisions about why particular projects were to receive funds by the designated decision-makers. Instead, he said that each funding agreement 'documents the appropriation expenditure function under the *Government Sector Finance Act ...*' and that 'the Office of Local Government had no role in deciding the grants'.<sup>292</sup>
- 4.61** Mr Hurst further noted that he had not seen a written brief approving any of the projects or any document signed by a Minister identifying which councils should get funding and who made the decision.<sup>293</sup>
- 4.62** When asked whether this meant the Premier had approved funding verbally and emailed him the outcome, Mr Hurst stated that he could not speculate on the process undertaken in the Premier's Office:

I cannot comment on what the process was that led to those instruction emails being issued to the Office of Local Government. Our job was to act on them in administering the program.<sup>294</sup>

### ***Ministerial office emails***

- 4.63** In the absence of formal funding briefs, Mr Hurst told the committee he relied on emails from Ministerial staff to make payments to councils. As noted in chapter 1, these emails were produced to the Legislative Council under standing order 52. A number of them were also tabled in this inquiry and used to question witnesses.
- 4.64** When asked whether he had seen a signed, dated written brief approving any of the projects, Mr Hurst indicated that he had relied on emails sent to him from ministerial offices, stating: 'The decision to go ahead with the payment was based on the information provided by the relevant minister's office about the decision that had been made'.<sup>295</sup>
- 4.65** According to Mr Hurst, these emails constituted advice in line with the grant guidelines:

Those emails are a record of the Office of Local Government being advised – consistent with the program guidelines – of the council, the project and the amount. The guidelines say that these are for projects identified by the NSW Government and the Office of Local Government then proceeds with issuing the funding agreement.<sup>296</sup>

<sup>291</sup> Evidence, Mr Hurst, 21 September 2020, p 61.

<sup>292</sup> Evidence, Mr Hurst, 21 September 2020, p 63.

<sup>293</sup> Evidence, Mr Hurst, 21 September 2020, pp 61-62.

<sup>294</sup> Evidence, Mr Hurst, 21 September 2020, p 62.

<sup>295</sup> Evidence, Mr Hurst, 21 September 2020, pp 62-63.

<sup>296</sup> Evidence, Mr Hurst, 21 September 2020, p 63.

- 4.66 Mr Hurst also stated that the emails from ministerial staff 'in each case detailed the decision-maker'.<sup>297</sup>
- 4.67 In the February hearing, Mr Hurst was given the opportunity to clarify his evidence on a number of matters. In response, Mr Hurst directed the committee to either his previous evidence, to his answers to questions on notice or to his letter to the Clerk of the Parliaments.<sup>298</sup>

#### **Ministerial office and Ministerial evidence**

- 4.68 A number of current and former ministerial advisors who appeared before the committee, as well as the Deputy Premier, provided opposing evidence, arguing that the Office of Local Government was responsible for project approvals.

#### ***Responsibility for project approvals***

- 4.69 Ms Sarah Lau, Senior Policy Advisor in the Office of the Premier, disputed that the Premier was responsible for approving the projects. Instead, Ms Lau argued that Mr Hurst 'was responsible for the authorisation and approval for each and every one of those grants',<sup>299</sup> and that 'it was Mr Hurst as the Chief Executive Officer of the Office of Local Government who was responsible for signing and approving the payments under the grants program'.<sup>300</sup>
- 4.70 According to Ms Lau, Mr Hurst formally approved the grant payments by signing the funding agreements, stating that Mr Hurst did so 'by signing each and every formal funding brief for each and every grant under the program'.<sup>301</sup> Ms Lau denied that she was approving the projects on behalf of the Premier and exercising delegated funding authority by sending emails detailing which projects were to be funded.<sup>302</sup>
- 4.71 Ms Laura Clarke, Former Deputy Chief of Staff in the Office of the Deputy Premier argued that the Deputy Premier did not approve the grants and was not involved in any way with the administration of the fund. Ms Clarke also argued that 'the role of decision-making and approval rested with the Office of Local Government'.<sup>303</sup>
- 4.72 Ministerial staffers asserted that they expected that the Office of Local Government would undertake an assessment process once eligible projects had been identified. Mr Crocker stated that the Stronger Communities Fund was a program run by the Office of Local Government, overseen by the Minister for Local Government and that he expected there were appropriate governance and approval processes in place.<sup>304</sup>

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<sup>297</sup> Evidence, Mr Hurst, 21 September 2020, p 62.

<sup>298</sup> Evidence, Mr Hurst, 8 February 2021, pp 33-34; 36-37.

<sup>299</sup> Evidence, Ms Lau, 23 October 2020, p 2.

<sup>300</sup> Evidence, Ms Lau, 23 October 2020, p 8.

<sup>301</sup> Evidence, Ms Lau, 23 October 2020, p 5.

<sup>302</sup> Evidence, Ms Lau, 23 October 2020, pp 14-15.

<sup>303</sup> Evidence, Ms Clarke, 9 December 2020, pp 19-21.

<sup>304</sup> Evidence, Mr Crocker, 9 December 2020, pp 2; 13.

**4.73** Ms Clarke said it was her understanding that projects listed in emails she sent to Mr Hurst 'were to be considered with other projects that other newly merged councils had applied for' and that she expected Mr Hurst would administer the fund according to the Department of Premier and Cabinet's Good Practice Guide.<sup>305</sup>

**4.74** The Premier, the Hon Gladys Berejiklian MP, gave evidence to Portfolio Committee No. 1 as part of the Budget Estimates 2020-21 inquiry that she had been provided advice about suggested projects but was not the approver of the grants.<sup>306</sup> She stated 'it was not my responsibility or authority to approve the dollars or support the dollars going out the door'.<sup>307</sup> The Premier asserted that the Office of Local Government was responsible for ensuring the probity of each of the grants:

It is the responsibility of the Office of Local Government to make sure that every project had gone through the due diligence process and all the probity processes and that each allocation was undertaken appropriately.<sup>308</sup>

**4.75** In addition, the Hon John Barilaro MP was asked by the committee whether he allocated \$61.3 million as alleged by Mr Hurst, to which he responded: 'No. Straight out, no'.<sup>309</sup>

**4.76** Mr Barilaro argued that the fund was administered by the Office of Local Government and that 'any of the processes in my office would have been in an advisory level'.<sup>310</sup> Mr Barilaro stated that Mr Hurst formally approved these grants under financial delegation:

The Stronger Communities Fund was administered by the Office of Local Government, and the Office of Local Government falls under the responsibility of the Minister for Local Government. I have been advised that, with the exception of two grants which were formally approved by the then Minister for Local Government, all grants from the Stronger Communities Fund were formally approved by the Chief Executive Officer of the Office of Local Government acting under a valid instrument of financial delegation issued by the then Minister for Local Government in accordance with the *Public Finance and Audit Act 1983*.<sup>311</sup>

**4.77** Mr Barilaro characterised his input into the fund as providing feedback on potential regional projects and asserted this was an 'entirely appropriate and common practice as I am the Minister for Regional New South Wales'.<sup>312</sup>

<sup>305</sup> Evidence, Ms Clarke, 9 December 2020, pp 19; 23.

<sup>306</sup> Evidence, Portfolio Committee No. 1 – Premier and Finance, Budget Estimates 2020-2021, Ms Berejiklian, 4 March 2021 (uncorrected transcript), pp 29-31; 35-36.

<sup>307</sup> Evidence, Portfolio Committee No. 1 – Premier and Finance, Budget Estimates 2020-2021, Ms Berejiklian, 4 March 2021 (uncorrected transcript), p 39.

<sup>308</sup> Evidence, Portfolio Committee No. 1 – Premier and Finance, Budget Estimates 2020-2021, Ms Berejiklian, 4 March 2021 (uncorrected transcript), p 39.

<sup>309</sup> Evidence, The Hon John Barilaro MP, Deputy Premier and Minister for Regional New South Wales, Industry and Trade, 8 February 2021, p 24.

<sup>310</sup> Evidence, Mr Barilaro, 8 February 2021, pp 4-5.

<sup>311</sup> Evidence, Mr Barilaro, 8 February 2021, p 2.

<sup>312</sup> Evidence, Mr Barilaro, 8 February 2021, p 2.

- 4.78** Mr Barilaro was asked to respond to Mr Hurst's evidence that Mr Hurst had not determined which projects were to be funded. Mr Barilaro indicated that there are no documents with his signature approving the funds and that Mr Hurst had financial delegation to sign off projects and make decisions:

... [T]here are no documents or facts that show that I was approving these funds ... [M]y office's role, and my role, was to give feedback. That is all it was. There isn't a brief with my signature on it. There isn't a brief that gave any direction to Mr Hurst or the Minister for Local Government at the time. And at that time, as he had delegated authority to sign off, he could have made any decision in or against any of those decisions and he didn't.<sup>313</sup>

***Formal funding briefs***

- 4.79** Ms Lau asserted that the Premier had not signed any formal approval briefs for projects funded under the tied grants round as 'the Office of the Premier and the Premier were not responsible for the administration of the funding program'.<sup>314</sup> Ms Lau noted further: '... the Premier did not have a formal approval role under the Stronger Communities grants program. For that reason, she did not sign any formal approval briefs approving any grant payments'.<sup>315</sup>

- 4.80** Ms Lau was asked to confirm that there was no substantive funding brief seeking approval of projects from either the Office of Local Government or the Department of Premier and Cabinet. Ms Lau confirmed this was the case and added that Mr Hurst did not request that she provide such a brief:

Yes, and I should also further add to that point that at no time did Mr Hurst - as the administrator of this grants program, and the final approver of each and every grant payment - at no time throughout the time I was working closely with him on the program did he ever advise me that he required a formal signed brief from the Premier to approve funding.

...

At no time did he ever request that from me. Had he done so, I would have of course immediately organised for the preparation of such a formal brief for the Premier to sign...<sup>316</sup>

- 4.81** Mr Crocker stated that if it was a formal approval process, he would expect there to have been a formal briefing note from either the Department of Premier and Cabinet or Office of Local Government.<sup>317</sup>
- 4.82** Similarly, Ms Laura Clarke confirmed that she had not seen a formal brief from the Office of Local Government regarding the projects. When asked whether she considered this unusual,

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<sup>313</sup> Evidence, Mr Barilaro, 8 February 2021, p 19.

<sup>314</sup> Evidence, Ms Lau, 23 October 2020, p 8.

<sup>315</sup> Evidence, Ms Lau, 23 October 2020, p 5.

<sup>316</sup> Evidence, Ms Lau, 23 October 2020, p 11.

<sup>317</sup> Evidence, Mr Crocker, 9 December 2020, p 17.

she stated: 'that is why I stand by the fact that the Deputy Premier was not the approver of this fund'.<sup>318</sup>

- 4.83** The Hon Gladys Berejiklian MP also argued that the lack of a formal funding brief signed by her indicated she did not approve projects for funding. She stated '... the reason why I would not have received a departmental brief is because I was not the Minister responsible for executing the grants'.<sup>319</sup> The Hon John Barilaro MP argued the same, stating: '... there is not a document from me, a brief signed by me saying signed, approved, direct. I just did not do that'.<sup>320</sup>

### *Ministerial office emails*

- 4.84** As noted above, ministerial staff wrote emails to Mr Hurst with projects to be funded. However, ministerial staff disputed Mr Hurst's evidence that these emails constituted formal project approvals. Instead, they argued their emails only indicated which projects were eligible.
- 4.85** Ms Lau maintained the emails she sent to Mr Hurst were an accurate record of the outcome of the working advice notes to the Premier, but argued that they did not record the Premier's approval or sign-off of the projects. Ms Lau said the emails communicated that the Premier was 'comfortable' with the projects:

What I was communicating to Mr Hurst, the Chief Executive Officer of the Office of Local Government, was a confirmation that the Premier was comfortable with the proposed allocation of funding and the proposed projects that I had set out in my email.<sup>321</sup>

- 4.86** She stated further: 'I was not making any funding decisions. I do not have any delegated funding authority and I was not authorising or approving any payments in sending my emails to Mr Hurst'.<sup>322</sup>
- 4.87** Ms Clarke also emphasised that, in her view, her emails to Mr Hurst were not a part of the decision-making process but were simply identifying eligible projects.<sup>323</sup> The Hon John Barilaro MP similarly asserted that he provided input into eligible projects but did not determine funding. He stated: '... my views were sought via discussions with my Deputy Chief of Staff, who then relayed this information to the Office of Local Government as an input into that process'.<sup>324</sup>
- 4.88** Ms Lau was asked about multiple emails in which she stated that the Premier had 'approved' or 'signed off' on different projects. Ms Lau described these statements as a 'turn of phrase' and argued that the Premier had not in fact approved or signed off the list of projects to be funded.<sup>325</sup> Ms Lau stated:

<sup>318</sup> Evidence, Ms Clarke, 9 December 2020, p 20.

<sup>319</sup> Evidence, Portfolio Committee No. 1 – Premier and Finance, Budget Estimates 2020-2021, Ms Berejiklian, 4 March 2021 (uncorrected transcript), p 31.

<sup>320</sup> Evidence, Mr Barilaro, 8 February 2021, p 20.

<sup>321</sup> Evidence, Ms Lau, 23 October 2020, p 2.

<sup>322</sup> Evidence, Ms Lau, 23 October 2020, p 15.

<sup>323</sup> Evidence, Ms Clarke, 9 December 2020, pp 19-20.

<sup>324</sup> Evidence, Mr Barilaro, 8 February 2021, p 3.

<sup>325</sup> Evidence, Ms Lau, 23 October 2020, p 17.

I would say that my use of the term "approved"—and I think in other emails I might have said "signed off"—was a turn of phrase that I was using. It would have been more accurate to say that she [the Premier] confirmed that she was comfortable with the proposed projects...<sup>326</sup>

- 4.89** Ms Clarke was also asked about multiple emails in which she wrote that the Deputy Premier had approved project allocations. Ms Clarke noted that her emails used a number of terms 'indicating the Deputy Premier's support for projects' but that she did not intend that using words such as 'approved' or 'agreed' would constitute a formal approval process. Ms Clarke argued that despite stating the Deputy Premier had approved various projects, she nevertheless expected that the Office of Local Government would conduct a separate formal approval process.<sup>327</sup>
- 4.90** The Hon John Barilaro MP also viewed that use of the word 'approve' in an email does not necessarily mean he was the final signatory. Mr Barilaro denied that he had directed Mr Hurst, through his office's emails, stating: 'it wasn't directions. It was feedback'.<sup>328</sup>
- 4.91** A number of witnesses were asked about a particular email chain between the Office of the Deputy Premier and Mr Hurst, where Mr Hurst asked Ms Clarke on 19 November 2018 'can you please confirm for our audit records that the Deputy Premier has approved these project allocations to the Councils' and Ms Clarke replied 'Yes confirmed all approved by the DP [Deputy Premier]'.<sup>329</sup>
- 4.92** Mr Barilaro responded that the email chain documented 'the end of the process':
- When we get to the point of funding agreements – you are talking about funding agreements, so councils have now identified a project, gone out to fund the project, worked with the Office of Local Government and Tim Hurst would be the signatory to this agreement. This is now just a funding agreement. By then, all projects would have been identified because you are talking about a funding agreement.<sup>330</sup>
- 4.93** Mr Hurst was asked why he wrote the email and what evidence he required to be included in an audit trail. Mr Hurst responded that he needed to document the process of providing the grant and required 'confirmation of projects having been identified by the NSW Government'.<sup>331</sup>
- 4.94** The agency administering the fund - the Office of Local Government - did not hold or record any conflicts of interest in relation to these grants. No evidence of any conflict of interest declarations was presented, including in the Offices of the Premier and the Deputy Premier.

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<sup>326</sup> Evidence, Ms Lau, 23 October 2020, p 6.

<sup>327</sup> Evidence, Ms Clarke, 9 December 2020, pp 24-27; 39.

<sup>328</sup> Evidence, Mr Barilaro, 8 February 2021, pp 18-20.

<sup>329</sup> Return to order for papers, 4 August 2020, The Stronger Communities Fund – Additional documents, Emails between Office of Local Government and Deputy Premier's staff, dated 16 November 2018 – 20 November 2018; Tabled document, 9 December 2020, p 14.

<sup>330</sup> Evidence, Mr Barilaro, 8 February 2021, pp 25; 29.

<sup>331</sup> Evidence, Mr Hurst, 8 February 2021, pp 39-40.

## Views of oversight agencies

**4.95** The Independent Commission Against Corruption and the Auditor-General of NSW provided some general comments on the design and administration of the Stronger Communities Fund tied grants round. The former Auditor-General, Mr Tony Harris, also provided his views on the legality of the fund from his perspective as an Auditor.

### The Independent Commission Against Corruption's view

**4.96** The Hon Peter Hall QC, Chief Commissioner of the Independent Commission Against Corruption, stated that ICAC has a policy position of not providing direct comment on matters that may at some point be the subject of a formal ICAC investigation. The committee acknowledges the appropriateness of this approach. Mr Hall was therefore unable to comment directly on the tied grants round but made some general comments on issues that had arisen.<sup>332</sup>

**4.97** Mr Hall acknowledged that he had never come across a notification process such as that used in the tied grants round, where some councils that may have been eligible were not notified of a grant program.<sup>333</sup> He noted that situations where projects are identified or approved for grant funding prior to the finalisation of the program guidelines as a 'corruption risk scenario'. Such a situation, he said, would mean the process lacked objectivity and fairness.<sup>334</sup>

**4.98** Again speaking generally and as noted in chapter 2, Mr Hall stated that it was important that a clear recommendation be put to decision-makers and that this be recorded and supported by reasons. A grant program that was administered without a written recommendation to a decision-maker, or without a signed and dated record of the decision, would, he agreed, 'be of great concern'.<sup>335</sup>

**4.99** As noted in chapter 2, ICAC advised that ministerial discretion is not unfettered and may amount to corrupt conduct in certain circumstances if it is a sufficiently serious breach of public trust. Mr Hall stated:

Whilst every case necessarily turns on its own factual circumstances, if a Minister intervenes and overrides a government grant program or scheme, including in particular in relation to the decision-making processes by which successful applications are determined, and intentionally does so for purposes of possible electoral advantage, such intervention could constitute corrupt conduct under the provisions of the *Independent Commission Against Corruption Act 1988*. In a case where the relevant Minister intervenes with the selection process with an intention of benefiting persons or entities for electoral advantage and who or which were not originally selected as the successful candidates, then significant questions, including questions of law, arise.<sup>336</sup>

<sup>332</sup> Evidence, The Hon Peter Hall QC, Independent Commission Against Corruption, 16 October 2020, pp 6; 8.

<sup>333</sup> Evidence, Mr Hall, 16 October 2020, pp 7-8.

<sup>334</sup> Evidence, Mr Hall, 16 October 2020, p 8.

<sup>335</sup> Evidence, Mr Hall, 16 October 2020, p 9.

<sup>336</sup> Evidence, Mr Hall, 16 October 2020, pp 2-3.

**4.100** ICAC noted that ministerial discretion cannot be used to interfere with a merit-based grants process, stating: 'Breaches of public trust can also arise where the action of an elected official interferes with merit-based processes executed by public servants'.<sup>337</sup> Further, it noted that this can amount to breach of public trust and possibly corruption:

[A]ny action by a politician that causes a public servant to do or say something that is dishonest or contrary to the stated terms and conditions of a grants program, may breach public trust. If sufficiently serious, the conduct may rise to the level of corrupt conduct.

This means that if a politician wishes to engage in pork-barrelling in order to pursue a political objective, she or he should not do so by creating the false impression of an objective, merit-based grant scheme.

...

Where a grant scheme is designed and assessed on the basis of specified eligibility and selection criteria, it would be a rare case (if any) in which a grant should be made (by a minister or anyone else) if the required criteria were not satisfied. A completely arbitrary decision in those circumstances may be seen as an improper exercise of power undertaken with a wrongful intent. That is, a minister may not be at liberty to depart from the "rules of the game"..<sup>338</sup>

**4.101** ICAC gave examples of conduct that may, depending on the circumstances, amount to a breach of public trust. A number of these examples are pertinent to the administration of the Stronger Communities Fund, including:

- designing eligibility and selection criteria for the purpose of favouring a particular applicant, at the expense of the public interest
- encouraging a public official to create false or incomplete records or to conceal the involvement of an elected official, or any other wilful suppression of information about a grants scheme
- if the minister is not the appointed decision-maker, directing or urging a public servant to make a decision preferred by the minister.<sup>339</sup>

**4.102** The Chief Commissioner was asked about whether an extreme amount of ministerial discretion, such as a Minister simply choosing projects from a spreadsheet, would be considered corruption. Mr Hall said that this would depend in part on the legislative framework but that it 'would be extraordinary if legislation was framed in a way that provided for a Minister of the Crown to have complete, unfettered discretion to override the scheme itself'. Mr Hall noted a Minister could not override or negate a legislative grants scheme without express power to do so as such a power would effectively remove probity.<sup>340</sup>

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<sup>337</sup> Submission 92, Independent Commission Against Corruption, p 10.

<sup>338</sup> Submission 92, Independent Commission Against Corruption, p 10.

<sup>339</sup> Submission 92, Independent Commission Against Corruption, p 9.

<sup>340</sup> Evidence, Mr Hall, 16 October 2020, p 4.

### The Auditor General's view

- 4.103** Representatives from the Audit Office also indicated they may look into the specifics of the Stronger Communities Fund but answered some questions on general grant administration relating to the tied grants round.<sup>341</sup>
- 4.104** For example, Ms Claudia Migotto, Assistant Auditor-General, Performance Audit, said that none of the performance audits they had conducted recently used a notification process such as that used in the tied grants round.<sup>342</sup> Ms Migotto also commented on record-keeping obligations, stating:
- I think it is the obligation of public servants to record their activities. That is expressed in the *State Records Act*. It does not mean you have to jot down the minutiae of your day, but obviously things that influence outcomes, particularly outcomes for the community, things that influence the transfer of money, they are the things that public servants are required to make records of...<sup>343</sup>
- 4.105** Speaking generally about decision-making, Ms Migotto stated: 'we are looking for clarity around the justification for the decision-making; whether that occurs at a ministerial or departmental level...'<sup>344</sup>
- 4.106** Ms Margaret Crawford, Auditor-General, agreed that it is a fundamental principle that each grant program has a decision-maker. In this context she noted it would be of great concern if there was no written, signed brief recording a decision and would be very unusual for a funding decision not to be recorded and include a dated signature of the decision-maker.<sup>345</sup>
- 4.107** Ms Crawford noted that some grants are structured so that one agency assesses projects but another approves them. In these cases, she indicated that further documentation would be required, noting the Audit Office would look for 'an agreement between the parties as to what is intended to happen, what the role of the assessing agency is and what the role of the recommending or approving agency is'.<sup>346</sup>

### The former Auditor-General's view

- 4.108** Mr Tony Harris, former Auditor-General indicated that the lack of a formal decision-maker represented a potential breach of public trust for all parties involved with the grant. He noted further that 'the Premier should not have even been talking to the Office of Local Government and the Office of Local Government should not have been responding to the Premier' as the Office of Local Government was the responsibility of the Minister for Local Government.<sup>347</sup>

<sup>341</sup> Evidence, Ms Claudia Migotto, Assistant Auditor-General, Performance Audit, Audit Office of New South Wales, 16 October 2020, p 36.

<sup>342</sup> Evidence, Ms Migotto, 16 October 2020, p 36.

<sup>343</sup> Evidence, Ms Migotto, 16 October 2020, p 42.

<sup>344</sup> Evidence, Ms Migotto, 16 October 2020, p 35.

<sup>345</sup> Evidence, Ms Margaret Crawford, Auditor-General of New South Wales, 16 October 2020, pp 38-39.

<sup>346</sup> Evidence, Ms Crawford, 16 October 2020, p 37.

<sup>347</sup> Evidence, Mr Tony Harris, Former Auditor-General of NSW, 9 December 2020, p 61.

- 4.109** Mr Harris told the committee that in his view, the word 'approve' was intended to signify approval of the different projects. He stated:

I do not think either party can say that they did not mean "approved" when they use the word "approved" and certainly the Office of Local Government took the word "approved" to be what ordinary dictionary readers would understand of that word.<sup>348</sup>

- 4.110** Mr Harris further argued that authorising financial expenditure and determining who should get funding and how much, are two different decisions and explained his reading of the evidence gathered by the committee to date as follows:

[I]t is quite clear that the Office of Local Government did not wish to be seen as the entity selecting the grants. And, in some respects, of course, it could not select the grants because it did not have any information. It was not involved in identifying them, it could not select the grants because it did not have any information. It was not involved in identifying them, it did not know anything about them until they got a request that this council for this project be given this amount of money. This is the first time, in my memory of reading the evidence, they knew anything about any particular grant...<sup>349</sup>

- 4.111** When asked to comment on the simultaneously wide and narrow eligibility for the tied grants round and evidence that a council was not entitled to be considered for funding until after the NSW Government had identified a project in that council, Mr Harris stated:

I suppose that Tim Hurst is trying to make a silk purse out of the pig's ear. You cannot have a competitive process, you cannot even have a process that meets the legislated requirements for efficiency, economy and effectiveness by using such a limited scope of identifying projects. If Mr Hurst made these decisions, then he could be condemned for a whole host of breaches of, if not legislation, of guidelines and of requirements to act prudently and with economy. But, as I have said, I have never understood an argument where the Premier has used the word "approved", where the Premier's office has used the word "approved", and where they say, "We didn't approve".<sup>350</sup>

- 4.112** Mr Harris commented further that there was a risk that funds used for the tied grants round had not been appropriated properly but that it was difficult to trace how the funds had been used:

I must admit I was not able to trace the appropriation to my satisfaction. I saw that in the *Appropriation Bill 2018 No. 35*, which is for the fiscal year 2018-2019, there was an appropriation made to the Planning Minister. I expect and hope that the sub-appropriations were by delegation made to the Minister for Local Government but I cannot see those delegations; they are not a public document. Then I would hope and expect, as Mr Hurst has indicated, he had the delegation to expend the Stronger Communities Fund. But as I say, in that middle area before Mr Hurst uses his delegation, I am not sure of the line. It was very confusing.<sup>351</sup>

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<sup>348</sup> Evidence, Mr Harris, 9 December 2020, p 61.

<sup>349</sup> Evidence, Mr Harris, 9 December 2020, pp 60-61.

<sup>350</sup> Evidence, Mr Harris, 9 December 2020, p 65.

<sup>351</sup> Evidence, Mr Harris, 9 December 2020, pp 61-62.

## Committee comment

- 4.113** Throughout the inquiry the committee received contradictory evidence regarding who was responsible for approving grants under the guidelines, who in fact approved projects under the guidelines and what this approval process involved. Terms such as 'allocated', 'approved' and even 'funding briefs' were not used consistently or clearly.
- 4.114** Further difficulties included the lack of detail in the guidelines setting out a process and decision-maker for the fund and the lack of signed formal funding briefs approving certain projects to receive funding. The committee therefore embarked on a fact-finding mission to get clear and correct information.
- 4.115** In the absence of clear evidence from witnesses, the committee had to rely on documents produced to the Legislative Council and to this committee. In particular, the committee has considered in detail Mr Hurst's letter of 19 October 2020, his answers to questions on notice provided on 23 October 2020 and the following documents produced to the Legislative Council under standing order 52:
- emails between ministerial staffers and Mr Tim Hurst, produced to the Legislative Council on 29 June 2020
  - briefing notes regarding the tied grants round and revised guidelines, including as attached the revised guidelines, produced to the Legislative Council on 24 September 2020 and
  - reconstituted working advice notes from the Office of the Premier, produced to the Legislative Council on 25 November 2020.
- 4.116** When taken together, these documents present a deeply troubling picture of how the tied grants round was administered. They make clear that the process of identifying and approving projects was one and the same, that the Premier and Deputy Premier impermissibly approved projects and directed the Office of Local Government to make payments, and that the Office of Local Government had no processes in place to assess the identified projects, nor did any other agency.
- 4.117** Projects were identified by ministerial offices according to their own interpretation of the vague guidelines. The committee notes with concern evidence that only government MPs were contacted by ministerial officers to suggest projects. The committee is also aware this occurred in the administration of the Stronger Country Communities Fund (see chapter 5).
- 4.118** The working advice notes from the Office of the Premier provide one of the only records of how decisions in the Office of the Premier were made. The working advice notes, together with the emails to the Office of Local Government, clearly indicate that the Premier approved the list of projects put to her, including the grants to Hornsby and Parramatta Councils.
- 4.119** The committee was very concerned to hear evidence that the working advice notes had been destroyed. While the Legislative Council was able to order that electronic copies of the documents be reconstituted from backups, this was not without considerable effort and in the face of government intransigence. The hard copies, on which the Premier likely wrote or marked to indicate her approval, were unable to be retrieved.

- 4.120** The destruction of the working advice notes is particularly concerning because of what they reveal about the maladministration of the Stronger Communities Fund. The working advice notes corroborate details in the ministerial office emails produced to the Legislative Council and call into question much of the evidence provided by ministerial staffers to the committee. In particular, the working advice notes indicate that the Premier approved the allocation of funds to particular councils, that much of the work in identifying and allocating projects had occurred before the revised guidelines had been approved, and that grants to Hornsby Shire and Parramatta City Councils were made in order to resolve legal issues between these councils and the NSW Government.
- 4.121** The committee does not accept evidence that the working advice notes were not formal funding briefs. The committee prefers evidence from the State Records and Archives Authority that these documents were formal briefing notes and were used as such by the Office of Local Government. It is the committee's view that they indicate the Premier's approval of the listed projects. Due to the lack of any departmental brief recommending the grants, these working advice notes contained the only record of the reasons for the grants, the policy rationale, alternative options or considerations, the advice of the Premier's personal staff and the Premier's own advice as recorded on these notes.
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**Finding 7**

That the working advice notes created in the Office of the Premier were used as formal funding briefs by which the Premier of New South Wales, the Hon Gladys Berejiklian MP, approved projects for the Stronger Communities Fund tied grants round.

**Finding 8**

That staff in the Office of the Premier breached the *State Records Act 1998* by destroying working advice notes concerning the Stronger Communities Fund tied grants round.

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- 4.122** The working advice notes revealed a number of matters that were not contained in emails to Mr Hurst. As such, the committee does not accept evidence that emails from the Premier's Office served as a full and comprehensive record of the outcome of the notes. Instead, the committee further accepts the view of the State Archives and Records Authority that the Office of the Premier breached the *State Records Act 1998* by destroying the notes. However, the committee is not satisfied with the response of the State Archives and Records Authority that it will not pursue the matter further and is of the view that the Office should be investigated further.
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**Recommendation 6**

That the Board of the State Records and Archives Authority reconsider its decision not to pursue further action against the Premier of New South Wales, the Hon Gladys Berejiklian MP, and her office, in light of its findings that the Office of the Premier breached the *State Records Act 1998* by destroying working advice notes regarding the Stronger Communities Fund tied grants round.

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- 4.123 No witness took responsibility for approval of projects. On the one hand, Ministerial staffers argued that Mr Hurst administered the fund and approved projects by signing funding agreements. On the other, Mr Hurst gave evidence that his only role in the fund was to prepare the funding agreements and make payments, but not to select or assess projects. It appears that the Office of Local Government had no process for assessing identified projects, nor did any other agency.
- 4.124 On balance, the committee prefers the evidence of Mr Hurst that he did not approve the funds. The Office of Local Government's role was limited to executing the funding agreements and approving the financial allocations. It did not make decisions about which projects were to receive funding. Mr Hurst was directed by the relevant Ministers, through their offices, about which projects to fund.
- 4.125 Further, it is clear from the emails produced under standing order 52 that the Premier and Deputy Premier were not just identifying projects to be considered by Mr Hurst, but were directing him to make payments to the identified councils.
- 4.126 The committee does not accept evidence that the Premier and Deputy Premier were only indicating they were 'comfortable' with a potential list of projects or were simply providing feedback. While Mr Hurst approved the projects by approving the financial expenditure and signing the funding agreements, he did not select which councils would receive funding and how much.
- 4.127 This committee concludes that, on the balance of evidence before it, the Premier and Deputy Premier were responsible for approving projects by identifying them to the Office of Local Government and they did so by approving lists of projects and communicating these lists, through their staff, to Mr Hurst.
- 4.128 In addition, the defence mounted by the Deputy Premier as to his involvement in the scheme was that no briefs or approvals had his signature on them. In fact the issue with the lack of documentation held by his office is one of the most critical failures in the entire grants scheme.
- 4.129 It is unacceptable that, given his role in determining which projects were funded, that the Deputy Premier's office had not a single document evidencing his position (other than the emails to the Office of Local Government discussed above) or any briefing identifying on what basis these multi-million dollar decisions were made. This is contrary to any understood practice of good governance and it is a breach of his duty of care in relation to the allocation of public money.

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### **Finding 9**

That the Premier of New South Wales, the Hon Gladys Berejiklian MP and the Deputy Premier of New South Wales, the Hon John Barilaro MP approved projects to be funded under the Stronger Communities Fund tied grants round and directed the Office of Local Government to make the payments.

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**Finding 10**

That the Office of the Deputy Premier failed to comply with the basic rules of good governance by keeping no records detailing the basis on which the Deputy Premier of New South Wales, the Hon John Barilaro MP determined to allocate \$61.3 million of public money under the Stronger Community Fund tied grants round.

**Finding 11**

That the Office of Local Government had no process whereby it assessed potential projects for funding under the Stronger Communities Fund tied grants round, nor did any other agency.

**Finding 12**

That the agency administering the fund, the Office of Local Government, did not hold or record any conflicts of interest in relation to these grants. No evidence of any conflict of interest declarations was presented, including in the Offices of the Premier and the Deputy Premier.

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- 4.130** The committee notes evidence from the Auditor-General that it is a fundamental principle that grant programs must have a designated decision-maker and detailed documentation recording decisions. It is the committee's view that the design and administration of the Stronger Communities Fund tied grants round fell well short of these principles.
- 4.131** The committee notes evidence from ICAC that a breach of public trust by a public official is an example of conduct that could be corrupt. Further, ICAC advised of a number of circumstances that may amount to a breach of public trust, including:
- where eligibility and selection criteria are designed in order to favour a particular applicant, at the expense of the public interest
  - where a public official is encouraged to create false or incomplete records or conceal the involvement of an elected official, or any other wilful suppression of information, and
  - where a minister who is not the appointed decision-maker directs or urges a public servant to make a particular decision.
- 4.132** It is the committee's view that all three of these circumstances took place in the Stronger Communities Fund tied grants round. The clearest evidence of this is in the grant to Hornsby Shire Council where the guidelines were revised in order to allow the grant, incomplete records exist to justify the grant, and the grant was approved by the Premier, who was not the designated decision-maker for the fund.
- 4.133** As noted above, the Independent Commission Against Corruption has a policy position of not providing direct comment on matters that may at some point be the subject of a formal ICAC investigation. The Audit Office indicated they may look into the Stronger Communities Fund in the future. Without prejudicing the independence of these bodies, this committee urges the Legislative Council to refer its concerns and evidence into the Stronger Communities Fund tied grants round to ICAC and the Audit Office for investigation.
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### Recommendation 7

That the Legislative Council refer its concerns regarding the inappropriate design and maladministration of the Stronger Communities Fund tied grants round to the Audit Office of NSW, along with this report and committee transcripts of evidence for investigation.

### Recommendation 8

That the Legislative Council refer its concerns regarding the inappropriate design and maladministration of the Stronger Communities Fund tied grants round to the Independent Commission Against Corruption, along with this report and committee transcripts of evidence for investigation.

- 4.134** The committee also wishes to place on record its concerns with the quality of evidence from the Office of Local Government throughout this inquiry. While documentation provided by the Office of Local Government was of assistance, the committee was unable to obtain essential evidence on important matters concerning the assessment and authorisation of grant funding because we were not assisted by frank or willing evidence from the Office of Local Government during the hearings. This lack of assistance was notable, regrettable and insupportable.
- 4.135** This evidence was well below the standard that committees of the Legislative Council expect. While it is not the practice of committees to comment on the actions of public officials, the committee reminds public officials that they should assist committees in their inquiries to the best of their ability and we note that, while not fully explored in this inquiry, there are compulsion powers under the *Parliamentary Evidence Act* that may be necessary to engage should the behaviour reoccur. We ask that the Office of Local Government take note of this matter and proactively engage with the committee during the remainder of this inquiry.
- 4.136** On a separate matter, the committee places on record its concern that part of the reason for the maladministration of the Stronger Communities Fund is that as part of the annual budget process the Parliament has effectively abdicated any control over either the amount of money available to the government or the purpose for which that money is spent.
- 4.137** Section 45 of the *Constitution Act 1902* provides as follows (emphasis added):

#### Appropriation of Consolidated Fund

The Consolidated Fund shall be subject to be appropriated to such **specific purposes** as may be prescribed by any Act in that behalf.<sup>352</sup>

- 4.138** The primary means by which appropriations from the Consolidated Fund are made are the annual appropriation bills.
- 4.139** Professor Twomey observes that traditionally the annual appropriation bills itemised expenditure by the government and its purpose in some details. However, since the move to 'program' budgeting in 1982, and subsequently the move to appropriations to a minister in relation to a particular agency in 1988, this is no longer the case.<sup>353</sup>

<sup>352</sup> *Constitution Act 1902* s 45.

<sup>353</sup> Anne Twomey, *The Constitution of New South Wales*, (The Federation Press, 2004), p 544.

- 4.140** Rather, the annual appropriations bills are now in such a form that there is virtually no limitation on the purposes for which the money appropriated to the government by the Parliament may be spent. Money is appropriated within departments for 'outcomes', and the outcomes are so nebulous and vaguely expressed that the Parliament has no opportunity to examine the merits of expenditure until after the expenditure occurs.
- 4.141** In the specific instance of the Stronger Community Fund, it is simply impossible to identify in the Appropriation Acts passed by the Parliament in 2017 and 2018 where the Parliament provided the money for expenditure on this program. By extension, the Parliament had no say in the merits of such a program.
- 4.142** The committee notes that this issues was considered at the Commonwealth level by the High Court in the decision in *Combet v Commonwealth* [2005] HCA 61. The situation at the Commonwealth level in 2005 was effectively the same as it is in NSW today. In his decision, Justice McHugh characterised the arrangements at the Commonwealth level as effectively allowing the government 'to spend money on whatever output it pleases'.<sup>354</sup>
- 4.143** The separate judgment of Chief Justice Gleeson explicitly put the responsibility for control of expenditure back on to the Parliament:
- If Parliament formulates the purposes of appropriation in broad, general terms, then those terms must be applied with the breadth and generality they bear.<sup>355</sup>
- 4.144** In effect, control of expenditure and what programs public money is directed to must be undertaken by the Parliament or not at all. The courts will not intervene.
- 4.145** Given the misuse of public moneys through the Stronger Community Fund, the committee believes that it is time for the Parliament to re-examine the control it exercises over government expenditure. Noting that only the Legislative Assembly may amend the Annual Appropriation bill, the committee believes that such a task should ideally be undertake by a joint committee appointed by both Houses. However, should the Legislative Assembly decline to undertake such an inquiry, the committee believes that an inquiry into this issue should by undertaken by the Public Accountability Committee.

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### **Recommendation 9**

That the Legislative Council send a message to the Legislative Assembly to establish a Joint Select Committee to inquire into and report on the NSW budget process and parliamentary oversight.

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<sup>354</sup> *Combet v Commonwealth* (2005) 224 CLR 494 [89] (McHugh J).

<sup>355</sup> *Combet v Commonwealth* (2005) 224 CLR 494 [27] (Gleeson CJ).

## Chapter 5 Local government grants

This chapter outlines some of the major concerns local councils raised with current NSW Government grant programs available to local government. These include the significant amount of resources required by local councils to identify and apply for grants and challenges councils face with application processes, as well as with inconsistencies and delays, which exacerbate these problems. This chapter also considers alternatives to grant funding and the Stronger Country Communities Fund.

### Issues with NSW Government grants to local government

**5.1** Many local councils informed the committee that they are heavily reliant on grant funding which is uncoordinated and applied inconsistently. Councils expend significant resources applying for grants and find the huge number of grant programs and low application success rates challenging.

#### Reliance on grant funding

**5.2** A number of councils submitted they would not be able to provide services or facilities to their residents without government grants.<sup>356</sup> Regional councils noted they are particularly reliant on government grants as they have a smaller rate base due to smaller populations.<sup>357</sup> Mid-Western Regional Council, for example, stated that they relied on government funding for infrastructure and growth as revenue from council rates was used to fund day-to-day services.<sup>358</sup>

**5.3** Local Government NSW estimated that State and Federal grants represent roughly 31 per cent of council revenue across the State.<sup>359</sup> This was confirmed by estimates of local councils. Mr Anthony McMahon, Director of Assets and Operations from Bega Valley Shire Council said that State and Federal grants typically represent around 35 to 40 per cent of council's budget.<sup>360</sup> Similarly, Cr Phillip O'Connor, Mayor of Brewarrina Shire Council, told the committee Brewarrina Shire Council had a ratepayer base of approximately \$1 million and an operating budget of over \$11 million and 'could not survive' without State and Federal grant assistance.<sup>361</sup>

**5.4** Local Government NSW submitted that councils are reliant on grants as their financial sustainability is threatened by the twin pressures of and cost-shifting and rate pegging. Cost-shifting, which occurs when State or Federal governments transfer responsibility for infrastructure, services and regulatory functions, was argued to have 'imposed a cumulative total burden of \$6.2 billion over a 10-year period' across the state on local councils.<sup>362</sup>

<sup>356</sup> Submission 42, Lachlan Shire Council, p 1; Submission 14, Narrabri Shire Council, p 1; Submission 38, Richmond Valley Council, p 1.

<sup>357</sup> For example: Submission 9, Narrandera Shire Council, p 1; Submission 19, Bland Shire Council, p 1; Submission 47, Brewarrina Shire Council, p 3; Submission 52, Kyogle Council, p 1.

<sup>358</sup> Submission 4, Mid-Western Regional Council, p 1.

<sup>359</sup> Submission 11, Local Government NSW, p 4.

<sup>360</sup> Evidence, Mr Anthony McMahon, Director, Assets and Operations, Bega Valley Shire Council, 27 November 2020, p 24.

<sup>361</sup> Evidence, Cr Phillip O'Connor, Mayor, Brewarrina Shire Council, 27 November 2020, p 27.

<sup>362</sup> Submission 11, Local Government NSW, p 3.

- 5.5** Though heavily reliant on grant funding, councils told the committee they are unable to predict which applications will be successful or how much they will receive for most grant programs. Mr Tim Mackney, Manager of Infrastructure Delivery at Tweed Shire Council, noted that while some grant programs are relatively consistent, total grant income can vary from roughly \$45 to \$65 million per year, representing 20 to 30 per cent of total revenue.<sup>363</sup> Mr McMahon from Bega Valley Shire Council said this inconsistency makes it difficult for councils to plan for project delivery and to plan and budget for the future.<sup>364</sup>
- 5.6** Kyogle Council stated that doubt about how much funding they will receive is 'the highest impact issue' for them. It recommended that councils be given a three to five year allocation of funding for a long list of potentially eligible projects to allow councils to be more strategic and effective in planning.<sup>365</sup>

### **Oversight of local government grants**

- 5.7** Local councils are subject to a range of regulatory mechanisms that set out how they can receive funding.
- 5.8** The *Local Government Act 1993* sets out the guiding principles for local councils, including principles of sound financial management.<sup>366</sup> The Act also contains requirements around public consultation and access to information and decision-making, as well as audit and financial reporting requirements.
- 5.9** Under the Act, local councils are subject to the Integrated Planning and Reporting framework which sets out planning and reporting requirements for councils to develop long-term strategic plans.<sup>367</sup>
- 5.10** Cr Linda Scott, President of Local Government NSW said that this means councils are required to have long-term strategic and financial plans in place and undertake public consultation when preparing these plans to ensure their spending priorities are in line with community expectations.<sup>368</sup>
- 5.11** Additionally, as noted in chapter 2, agencies that provide grants to local government have their own probity processes to ensure grants are administered and funds are used appropriately.
- 5.12** However, it appeared that the Office of Local Government does not undertake probity checks for grants provided to local councils. When asked whether the Office of Local Government has a process that includes probity checks for its own internal management of grants it administers to local government, Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy at the Department of Planning, Industry and Environment, stated 'the process is that we give

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<sup>363</sup> Evidence, Mr Tim Mackney, Manager, Infrastructure Delivery, Tweed Shire Council, 27 November 2020, p 24.

<sup>364</sup> Evidence, Mr McMahon, 27 November 2020, p 24.

<sup>365</sup> Submission 52, Kyogle Council, pp 1-2.

<sup>366</sup> *Local Government Act 1993*, ss 8-8C.

<sup>367</sup> *Local Government Act 1993*, ss 402-406.

<sup>368</sup> Evidence, Cr Linda Scott, President, Local Government NSW, 21 September 2020, p 3.

money to councils' and that in his experience, it was not usual to undertake a probity assessment of grants to local government.<sup>369</sup>

- 5.13** Mr Hurst went on to explain that local councils are subject to a regulatory and monitoring framework under the *Local Government Act 1993* and are 'a different category of grant recipient'.<sup>370</sup> When asked why the Office of Local Government did not have internal probity processes in place, Mr Hurst confirmed that councils are subject to legislative requirements to spend money in a way that provides value for money and so the Office of Local Government expects they will do so.<sup>371</sup>

### **Range and availability of grant programs**

- 5.14** Some local councils submitted they were satisfied with the range and availability of grant programs, while others noted that grant programs are largely oversubscribed and the large number of different programs and variations between them can be costly and inefficient.
- 5.15** A number of regional local councils stated that they were supportive of the range of grant programs available.<sup>372</sup> Some councils suggested that grant programs for regional New South Wales have become more accessible over the last few years.<sup>373</sup> Other stakeholders were of the view that the amount of available funding had not risen. Mosman Municipal Council, for example, argued that the availability of grant funding has fallen in recent years for areas such as theirs.<sup>374</sup>
- 5.16** Local Government NSW noted that many grant programs are oversubscribed so that the amount of grant funding applied for often far exceeds the amount available. In particular, Local Government NSW stated the Safe and Secure Water Program has been exhausted, previous rounds of the Increasing Resilience to Climate Change program were oversubscribed, and the Fixing Country Roads program is regularly oversubscribed, with a reported \$2 billion backlog required to maintain New South Wales roads.<sup>375</sup>
- 5.17** Mr Chris Hanger, Deputy Secretary of Public Works Advisory and Regional Development in the Department of Regional NSW, agreed that some of the programs under the Regional Growth Fund are oversubscribed. For example he noted that 'one of our funds was a \$100 million round with \$800 million worth of applications'.<sup>376</sup>

<sup>369</sup> Evidence, Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, 8 February 2021, p 52.

<sup>370</sup> Evidence, Mr Hurst, 8 February 2021, p 52.

<sup>371</sup> Evidence, Mr Hurst, 8 February 2021, pp 52-53.

<sup>372</sup> Submission 7, Bathurst Regional Council, p 1; Submission 13, Tenterfield Shire Council, p 2; Submission 14, Narrabri Shire Council, pp 2-3; Submission 44, Griffith City Council, p 1.

<sup>373</sup> Submission 30, Cabonne Council, p 1; Submission 47, Brewarrina Shire Council, pp 6-9; Submission 59, Leeton Shire Council, p 1.

<sup>374</sup> Submission 12, Mosman Municipal Council, p 1.

<sup>375</sup> Submission 11, Local Government NSW, pp 5-6.

<sup>376</sup> Evidence, Mr Chris Hanger, Deputy Secretary, Public Works Advisory and Regional Development, Department of Regional NSW, 16 October 2020, p 17.

- 5.18** Some local councils said they are strategic in choosing which grants to apply for. Mr John Gordon, the City Presentation Manager at Penrith City Council noted that the council does not expect that every application will be successful and that the council chooses which grants to apply for carefully.<sup>377</sup> Similarly, Mr Michael Edgar, General Manager of The Hills Shire Council stated that the council is aware many grant programs are oversubscribed and has a 'deliberate process' by which they assess which grants to apply for.<sup>378</sup>
- 5.19** While local councils were supportive of any funding opportunities available to them, they argued that the range of different grant programs is problematic as each distinct program has its own rules and application processes. Grant programs vary in their eligibility, guidelines, timeframes, rules and reporting requirements. Tweed Shire Council told the committee these variations cause inefficiencies and confusion.<sup>379</sup> A number of councils suggested many grant programs could be consolidated and simplified.<sup>380</sup>
- 5.20** Local councils argued that the inconsistencies between grant programs was problematic. Kyogle Council described the current system of grants as ad hoc:
- We struggle because the grants programs are not designed with the delivery partner or the communities needs in mind. At present the grant programs are essentially an ad-hoc collection of programs operating in isolation from one another, with little to no consideration of the impacts on other state and federal programs, the delivery partners within local government, or the priorities of the individual communities or regions.<sup>381</sup>
- 5.21** Tweed Shire Council viewed that the current grants landscape is uncoordinated and unwieldy and creates inefficiencies and confusion at all stages of a project. According to Tweed Shire Council, while a particular program may have a logical objective, when considered as a whole, there is overlap and duplication:
- The diverse range of funding programs, partners, timeframes and rules creates inefficiencies and confusion at the application stage, for project planning and for project delivery. Each agency seems to have a raft of objectives they are trying to progress through funding of relevant projects. While this approach may appear logical in isolation, the sheer number of funding programs and their aims results in a cacophony of incongruent, conflicting, competing, but also often overlapping and duplicating funding – but each with its own rules, application and assessment processes, project requirements, payment methods and timings, etc, etc.<sup>382</sup>
- 5.22** Further, Tweed Shire Council asserted that 'some funding bodies do not seem to be aware of the constraints councils must work within, and the objectives of many funding programs are

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<sup>377</sup> Evidence, Mr John Gordon, City Presentation Manager, Penrith City Council, 21 September 2020, pp 30; 34.

<sup>378</sup> Evidence, Mr Michael Edgar, General Manager, The Hills Shire Council, 21 September 2020, p 29.

<sup>379</sup> Submission 46, Tweed Shire Council, p 1.

<sup>380</sup> For example: Submission 61, Penrith City Council, p 2; Submission 93, Lake Macquarie City Council, p 2.

<sup>381</sup> Submission 52, Kyogle Council, p 1.

<sup>382</sup> Submission 46, Tweed Shire Council, p 1.

incongruent or even nonsensical'. In particular, it argued grant programs often do not take into account the mandatory planning requirements councils are subject to.<sup>383</sup>

**5.23** As noted above, councils are required to undertake consultation and have long-term strategic planning documents in place. Grant programs, however, do not take these plans into account and may even counteract the planning work done by councils. For example, Tweed Shire Council noted that projects that have been identified within a council's strategic plans are not eligible for many grant programs. According to Tweed Shire Council, this means councils cannot fund well-defined projects with community support while funding is instead made available for projects that may not be as well-supported or planned.<sup>384</sup>

**5.24** In addition, Cr Scott told the committee that councils are not able to apply for or accept funding for projects that are outside their long-term strategic plans. She stated:

We know, for example, that where councils apply for or accept grants that are outside of that long-term strategic vision that they have been required to undertake consultation on, this can be the subject of questions, for example, from the Auditor-General or a range of other integrity agencies.<sup>385</sup>

**5.25** A number of councils argued that grant programs do not take into account local government priorities and needs. Local councils argued it was important that local government had input in grant funding as they have conducted extensive community consultation and are well-placed to identify their community's needs.<sup>386</sup>

**5.26** Some councils called for more autonomy and flexibility in how they spend money to allow them to spend funds according to their own priorities and needs.<sup>387</sup> Tweed Shire Council stated that it would be much more efficient if councils were able to allocate where funds could be spent in their own area.<sup>388</sup> Richmond Valley Council recommended that more untied grants be established, such as the Federal Government Bushfire Recovery funding and Drought Assistance funding to ensure local decision-makers are responsible for how funds are spent.<sup>389</sup>

**5.27** Others, such as Penrith City Council, noted that a number of different grant programs could be consolidated.<sup>390</sup>

**5.28** One way that councils felt grant programs do not take local government needs into account is by being overly prescriptive. In particular, councils raised concerns that often grant programs only offer funding for the creation of new assets, rather than upgrading or improving existing assets. This means that if a council receives a grant to build a new asset, it is then subject to

<sup>383</sup> Submission 46, Tweed Shire Council, p 1.

<sup>384</sup> Submission 46, Tweed Shire Council, p 1.

<sup>385</sup> Evidence, Cr Scott, 21 September 2020, p 3.

<sup>386</sup> Submission 8, Coolamon Shire Council, p 1; Submission 18, Blayney Shire Council, p 1; Submission 46, Tweed Shire Council, pp 1-2.

<sup>387</sup> Submission 52, Kyogle Council, p 3.

<sup>388</sup> Submission 46, Tweed Shire Council, p 3.

<sup>389</sup> Submission 38, Richmond Valley Council, p 3.

<sup>390</sup> Evidence, Mr Gordon, 21 September 2020, p 30.

additional long-term costs to operate and maintain it.<sup>391</sup> Ongoing costs of maintenance and renewal, as well as depreciation costs, were argued to be 'a heavy ongoing burden' on councils and may come at the expense of providing other services to the community.<sup>392</sup>

### Resourcing

- 5.29** A number of councils commented on the expense associated with identifying and preparing grant applications.
- 5.30** Councils were particularly supportive of consolidating grant programs and streamlining application processes as identifying and applying for grants is expensive and resource-intensive. In this context they recommended grant applications be streamlined or simplified to reduce this strain on resources and that guidelines are clear and explicit to allow councils to make strategic decisions about applications.
- 5.31** Clarence Valley Council said that preparing a business case and cost benefit analysis for a single project can cost between \$10,000 to \$20,000.<sup>393</sup> Tweed Shire Council noted that application requirements have increased in recent years so that councils are increasingly reliant on external professional assistance to prepare grant applications and this has led to the growth of a costly and inefficient grant writing industry:
- The requirements and information required by NSW grant programs have generally increased over the years. This sometimes triggers the need for input from external professionals to have input into grant applications ... This is leading to a costly grant writing industry which is counterproductive to achieving the best value for public monies.<sup>394</sup>
- 5.32** Councils identified staffing as one of the greatest costs involved in the grant process, as staff must identify funding opportunities and prepare grant applications. For example, Cr Scott from Local Government NSW said that applying for grants involves 'hundreds if not thousands of staff hours'.<sup>395</sup>
- 5.33** Mr Anthony McMahan, Director, Assets and Operations at Bega Valley Shire Council said that Bega Valley Shire Council has two full-time equivalent staff who apply for grants, as well as a Business Support Officer and Assets and Works Administration Officer who spend most of their time on grant applications and reporting. In sum, council spends up to approximately \$269,000 per year on staffing to support grants.<sup>396</sup> Bega Valley Shire Council also noted that there is 'enormous variability in the amount of effort and resources required' for different grant

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<sup>391</sup> Submission 46, Tweed Shire Council, pp 1-2; Submission 52, Kyogle Council, p 2; Submission 67, The Hills Shire Council, p 1.

<sup>392</sup> Submission 48, Snowy Valleys Council, p 1.

<sup>393</sup> Submission 68, Clarence Valley Council, p 3.

<sup>394</sup> Submission 46, Tweed Shire Council, p 5.

<sup>395</sup> Evidence, Cr Scott, 21 September 2020, p 5.

<sup>396</sup> Answers to questions on notice, Mr Anthony McMahan, Director, Assets and Operations, Bega Valley Shire Council, 12 January 2021, p 1.

programs and that the resources required relative to the value of the grant 'is often highly disproportionate'.<sup>397</sup>

- 5.34** Ms Shelley Oldham, General Manager, Lismore City Council, estimated that Lismore City Council spends \$470,000 per year on staffing costs to apply for and administer grants. As well as this, council sets aside approximately 10 per cent of each grant for grant reporting and administration. In addition, Lismore City Councils engages external consultants for some applications and noted it had recently spent \$150,000 on external economic analysis for one application.<sup>398</sup>
- 5.35** Councils also noted that staff costs are not eligible expenditure under most grants programs. Mr Mackney suggested that the cost of staff time to manage projects should be able to be covered in grant funding.<sup>399</sup> According to Bega Valley Shire Council, under many current grant programs, councils may not employ a person for a fixed term to deliver a grant or project but can engage that person as an external contractor which can drive up costs and increase the administrative burden. Bega Valley Shire Council therefore recommended that contracted council employees be included as eligible expenditure.<sup>400</sup>

### Timeframes

- 5.36** The challenges local councils face in applying for and managing grants are exacerbated by apparent inconsistent and unrealistic timeframes. Local councils told the committee that many programs do not provide enough time to make an application or to deliver on successful projects. These challenges are exacerbated by inconsistencies in timeframes across programs and delays in announcing successful projects.
- 5.37** Generally, councils agreed that the time allowed to make an application is usually too short. Federation Council noted that for many programs the application timeline can be four weeks or less. Federation Council said this is not enough time for councils to put together the detailed plans and costings required for applications. But if councils prepare this information before grant applications are announced, it is often out of date by the time applications are due.<sup>401</sup>
- 5.38** Mr Gerard Van Emmerik, Manager, Community and Economic Development at Federation Council suggested that lack of adequate support from departments can exacerbate this problem. He noted that it is especially hard to find information when programs provide only an email template or generic phone number for councils to contact, which causes further delays.<sup>402</sup>
- 5.39** Bega Valley Shire Council stated that many grant programs contain lags of often months between all stages - between application and closing dates, between outcome notification and public announcement, and between the provision and execution of funding deeds. These delays make it harder for councils to deliver projects and plan for future grant applications, especially

<sup>397</sup> Submission 36, Bega Valley Shire Council, p 5.

<sup>398</sup> Evidence, Ms Shelley Oldham, General Manager, Lismore City Council, 27 November 2020, p 22.

<sup>399</sup> Evidence, Mr Mackney, 27 November 2020, p 18.

<sup>400</sup> Submission 36, Bega Valley Shire Council, p 6.

<sup>401</sup> Submission 49, Federation Council, pp 7-8.

<sup>402</sup> Evidence, Mr Gerard Van Emmerik, Manager, Community and Economic Development, Federation Council, 27 November 2020, p 30.

as application processes for different grant programs may begin before announcements have been made on previously-submitted applications.<sup>403</sup>

- 5.40** Tweed Shire Council summarised some of the flow-on effects. It noted that insufficient time between announcement of a funding program and the application deadline often results in poorly defined estimates in applications. There is then often a long time before a decision is announced which cuts into project delivery time. The council indicated that delivery timeframes are then too short and do not allow enough time for design, approval and construction of a project or account for local government procurement requirements or the realities of construction.<sup>404</sup>
- 5.41** Mr Mackney noted Tweed Shire Council's recent experience with the NSW Active Transport Grant where council was informed of the grant in February 2020, submitted six applications in March and then was informed some of the projects were successful in October 2020. Tweed Shire Council must now deliver these projects by July 2021.<sup>405</sup>
- 5.42** Penrith City Council suggested that councils would benefit from the publication of a consolidated 'calendar' of NSW Government grant program opening and closing dates, and the publication of grant decision and announcement dates.<sup>406</sup> Cessnock City Council recommended that application open and closing dates be standardised across years.<sup>407</sup>

### **Funding announcements**

- 5.43** Another concern of local councils is when grant funding is announced by the NSW Government without first notifying the council. This puts pressure on councils to deliver grants they were not prepared to receive and can bring councils under scrutiny if the grant is to fund an asset or service that is not otherwise part of the council's adopted strategic plan.
- 5.44** Cr Darcy Byrne, Mayor of Inner West Council, advised that there is usually a requirement that councils include reference to the government's contribution in communications about any successful grant funding and invite a government representative to attend the opening of the project once it has concluded. He said that in his experience most councils 'are really keen to do that, because we know that if the government has been generous enough to provide funding for works in our area that it is a good idea to keep collaborating with it and to make it feel appreciated and welcome'.<sup>408</sup> Cr Khal Asfour, Mayor of City of Canterbury-Bankstown Council, agreed that, as council is always looking for additional funding, 'you do not bite the hand that feeds you'.<sup>409</sup>
- 5.45** Cr Scott from Local Government NSW said she was aware of occasions where funding announcements were made that excluded the mayor and local council and said that councillors

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<sup>403</sup> Submission 36, Bega Valley Shire Council, pp 4-5.

<sup>404</sup> Submission 46, Tweed Shire Council, pp 3-4.

<sup>405</sup> Evidence, Mr Mackney, 27 November 2020, p 18.

<sup>406</sup> Submission 61, Penrith City Council, p 3.

<sup>407</sup> Submission 70, Cessnock City Council, p 2.

<sup>408</sup> Evidence, Cr Darcy Byrne, Mayor, Inner West Council, 21 September 2020, p 25.

<sup>409</sup> Evidence, Cr Khal Asfour, Mayor, City of Canterbury-Bankstown Council, 21 September 2020, p 25.

'universally feel strongly that that should not be the case'.<sup>410</sup> Cr Scott noted that this can place councils in a 'very challenging position', particularly when a grant announcement has been made for a project that is outside its strategic plan.<sup>411</sup>

- 5.46** Cr Scott was also asked about occasions on which a local non-government member was excluded from an announcement about council funding and a government member was brought into the local area. Cr Scott agreed this has occurred, stating:

[I]t is certainly the case that that occurred. In a range of areas around the State in the lead-up to the State election, government MPs made announcements without informing the local member and in some cases also without informing the councils.<sup>412</sup>

- 5.47** Cr Asfour said that there are a number of instances where the council has been notified of grant funding via a local member's media release and noted this is a particular problem if there is a shortfall which the council must fund. If announcements have already been made, councils are under pressure to build the asset so they do not lose the funding, but this can mean other projects are not funded or delayed.<sup>413</sup>
- 5.48** Cr Asfour agreed there should be an unambiguous requirement that councils are notified of any proposed grant and consent to it before it is announced. Cr Asfour also noted that prior notification and consent would ensure councils are not left with a funding shortfall and that the proposed project aligns with a council's objectives and commitments it has made to the community.<sup>414</sup>

### **Grant application requirements**

- 5.49** Local councils raised concerns that complex application requirements make applying for grants more onerous and make grant funding less accessible, particularly to smaller rural and regional councils.
- 5.50** Local Government NSW argued that complex application processes and onerous application pre-requisites, including co-funding requirements, mean many councils cannot apply for grants, resulting in some grant programs being undersubscribed. It recommended that grant programs differentiate requirements for small, medium and large grants so that smaller value grants have more streamlined processes and less stringent application and reporting requirements.<sup>415</sup>

### ***Co-funding requirements***

- 5.51** Many grant programs require councils to make a commitment to co-fund a proposed project.
- 5.52** Kyogle Council said co-funding requirements 'turn away many potential applications for important projects' and favour councils with more resources to the detriment of those councils

<sup>410</sup> Evidence, Cr Scott, 21 September 2020, pp 8-9.

<sup>411</sup> Evidence, Cr Scott, 21 September 2020, pp 9-10.

<sup>412</sup> Evidence, Cr Scott, 21 September 2020, p 9.

<sup>413</sup> Evidence, Cr Asfour, 21 September 2020, pp 25-26.

<sup>414</sup> Evidence, Cr Asfour, 21 September 2020, pp 25-26.

<sup>415</sup> Submission 11, Local Government NSW, p 5.

who most need external funding.<sup>416</sup> Tweed Shire Council argued that co-funding requirements are particularly onerous in the context of disaster relief or emergency funding where councils have less funding available at the time.<sup>417</sup>

- 5.53** Port Macquarie-Hastings Council noted that grant guidelines can sometimes be unclear about whether a co-funding contribution is required. Guidelines often note that such a contribution will be considered favourably but it is hard for councils to know what impact this has when their application is assessed.<sup>418</sup>

### *Shovel-ready requirements*

- 5.54** A number of councils raised the issue of a 'shovel-ready' requirement in many grant applications which requires that a project must be planned to a stage where work can begin shortly. Councils argued this requirement was particularly onerous as they have to spend a significant amount of time and money to get projects to this stage but with no guarantee they would be funded.
- 5.55** Tweed Shire Council submitted that a significant amount of work goes into ensuring a project is shovel-ready. In the development cycle of a capital works project, for example, a project must have a business case and financial analysis, as well as detailed design development and certification.<sup>419</sup>
- 5.56** Although preparing a project to ensure it is shovel-ready takes significant time and resources, it does not guarantee a grant application will be successful. Ms Oldham from Lismore City Council gave an example of a shovel-ready project that the council had spent almost \$2 million preparing that had not been successfully funded for five years. Ms Oldham said that, consequently, council was reluctant to prepare other projects to shovel-ready status and it had become 'a reputational issue in the community'.<sup>420</sup>
- 5.57** A number of local councils recommended the implementation of staged application processes to assist councils in meeting application requirements. Generally, councils recommended this would involve a two-stage application process where projects are first presented as concepts to be shortlisted and then, if successful, progress to a full application.<sup>421</sup> Port Macquarie-Hastings Council suggested that the first stage might cover permissions, planning, engagement and detailed design, with a second stage for implementation and construction.<sup>422</sup>
- 5.58** Cr Bob Pynsent, Chair, Hunter Joint Organisation, argued that funding for concept development, including development of business cases and feasibility assessments, would 'create a pipeline of shovel-ready projects that are aligned to the shared interests and priorities of both State and local government'.<sup>423</sup>

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<sup>416</sup> Submission 52, Kyogle Council, p 2.

<sup>417</sup> Submission 46, Tweed Shire Council, pp 2-3.

<sup>418</sup> Submission 40, Port Macquarie-Hastings Council, p 3.

<sup>419</sup> Submission 46, Tweed Shire Council, p 6.

<sup>420</sup> Evidence, Ms Oldham, 27 November 2020, p 20.

<sup>421</sup> Submission 36, Bega Valley Shire Council, p 6; Submission 46, Tweed Shire Council, p 5; Submission 49, Federation Council, p 7; Submission 70, Cessnock City Council, p 2.

<sup>422</sup> Submission 40, Port Macquarie-Hastings Council, p 3.

<sup>423</sup> Evidence, Cr Bob Pynsent, Chair, Hunter Joint Organisation, 27 November 2020, p 36.

- 5.59** Stakeholders noted that some grant programs already use a similar staged application process and could be used as examples. Ms Jacquelyn Richards, Portfolio General Manager, Community Choice, Queanbeyan-Palerang Regional Council, noted that the Regional Cultural Fund grant, which required an expression of interest as a first step, used such a model.<sup>424</sup>
- 5.60** Similarly, Federation Council noted that the Inland Rail Interface Improvement Program, run by the Commonwealth Department of Infrastructure, Transport, Regional Development and Communications, was an appropriate model. In that program, expressions of interest are submitted and shortlisted and then project proponents are matched with specialist business advisors to assist in preparing the full application and business case.<sup>425</sup>

### ***Benefit-cost ratio requirements***

- 5.61** Most regional councils that submitted to the inquiry voiced strong opposition to grant applications that require councils to demonstrate a particular benefit-cost ratio for a proposed project.
- 5.62** A benefit-cost ratio is an indicator used in cost-benefit analysis that summarises the overall value for money of a project. Grant programs available under Restart NSW funding, for example, require that the project achieves an economic benefit for New South Wales which is typically demonstrated by a business case and a benefit-cost ratio of above one.<sup>426</sup>
- 5.63** Regional councils argued that benefit-cost ratio requirements in grant applications disadvantage smaller, regional councils due to their small populations and larger geographic areas. For example, Blayney Shire Council stated it often has difficulty meeting the benefit-cost ratio for significant projects. It argued that this lack of success means 'there was no value for money in pursuing unsuccessful submissions, so the outcome was self-fulfilling and self-perpetuating'.<sup>427</sup>
- 5.64** Brewarrina Shire Council described the problem for smaller, more remote councils as follows:
- With such a small budget, the Council is unable to gain economies of scale in the work that is performed and so the delivery of services to a small, remote, rural community is substantially more difficult and costly per head of population, than the delivery of works and services to larger regional or metropolitan centres.<sup>428</sup>
- 5.65** Mr Hanger from the Department of Regional NSW agreed that achieving a required benefit-cost ratio can be more challenging for smaller communities as it is based on population and is probably easier in larger centres 'because the benefits of the projects ... accrue more easily in those larger centres'. Mr Hanger agreed that communities that find it more difficult to demonstrate a particular benefit-cost ratio should not be denied critical services and infrastructure because of the requirement.<sup>429</sup>

<sup>424</sup> Evidence, Ms Jacquelyn Richards, Portfolio General Manager, Community Choice, Queanbeyan-Palerang Regional Council, 27 November 2020, p 32.

<sup>425</sup> Submission 49, Federation Council, p 7.

<sup>426</sup> Evidence, Mr Hanger, 16 October 2020, p 16.

<sup>427</sup> Submission 18, Blayney Shire Council, p 2.

<sup>428</sup> Submission 47, Brewarrina Shire Council, p 3.

<sup>429</sup> Evidence, Mr Hanger, 16 October 2020, pp 16-17.

- 5.66** Mr Hanger noted that the Department of Regional NSW has methodologies to effectively quantify the social value of a potential project. Using 'choice modelling' or 'stated preference surveys', the Department can seek to understand communities' preferences for projects that deliver community outcomes.<sup>430</sup>

### **Classification of Newcastle and Wollongong**

- 5.67** Newcastle and Wollongong councils told the committee that inconsistencies in eligibility across and even within different grant programs place them at a particular disadvantage.
- 5.68** The City of Newcastle argued that inconsistencies in eligibility mean it often misses out on grant opportunities available to local councils.<sup>431</sup> Cr Nuatali Nelmes, Lord Mayor, told the committee that eligibility requirements vary between departments so that the City of Newcastle is not considered regional for the purposes of many regional programs but is also not considered metro for many metro programs.<sup>432</sup>
- 5.69** Mr Tim Crakanthorp MP, Member for Newcastle, agreed that Newcastle was disadvantaged by inconsistent classifications, stating 'we are at the mercy of shifting goalposts' and describing the situation as 'Kafkaesque'. He noted that, for example, the City of Newcastle is ineligible for metropolitan programs such as the Metropolitan Greenspace Program as it is classified as regional under these programs but then also ineligible for programs such as the Growing Local Economies and the Regional Cultural Fund which classify the council as metropolitan.<sup>433</sup>
- 5.70** Wollongong City Council argued that the Wollongong local area is similarly affected by inconsistent grant program eligibility. Wollongong City Council said it is often classified as metropolitan, which disadvantages it as it has to compete with large city councils.<sup>434</sup>
- 5.71** Mr Paul Scully MP, Member for Wollongong, described the classifications as arbitrary and argued that eligibility for grant programs in areas such as Wollongong was often political, stating:

Whenever a new funding grant program comes out, anyone in Wollongong firstly asks "Is Wollongong eligible?" The simple guide that has emerged under successive programs administered by this government is "no" if it is a Nationals Minister, and "maybe" if it is a program administered by a Liberal Minister.<sup>435</sup>

- 5.72** Cr Nelmes outlined how missing out on grant programs has meant that a number of large planned projects with community support have not been funded while smaller projects just outside the local government area have been funded.<sup>436</sup> For example, a project to expand the Newcastle Art Gallery is shovel-ready with a business case, a benefit-cost ratio of 1.7 and

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<sup>430</sup> Evidence, Mr Hanger, 16 October 2020, p 17.

<sup>431</sup> Submission 64, City of Newcastle, p 1.

<sup>432</sup> Evidence, Cr Nuatali Nelmes, Lord Mayor, City of Newcastle, 27 November 2020, pp 2-3.

<sup>433</sup> Evidence, Mr Tim Crakanthorp MP, Member for Newcastle, 27 November 2020, pp 11-12.

<sup>434</sup> Submission 102, Wollongong City Council, p 1.

<sup>435</sup> Evidence, Mr Paul Scully MP, Member for Wollongong, 27 November 2020, pp 11; 14.

<sup>436</sup> Evidence, Cr Nelmes, 27 November 2020, pp 3-4.

committed funds from both the council and the Art Gallery Foundation but the council has been unable to attract grant funding to complete the project for a number of years.<sup>437</sup>

- 5.73** This lack of access has led to perverse outcomes. Cr Nelmes explained how, for example, the ineligibility of Newcastle for many grant programs meant the local basketball association could not attract grant funding within Newcastle. The association had to find a new site outside the local government area in order to apply for funding and the new site is further away from public transport and other facilities.<sup>438</sup>
- 5.74** Wollongong City Council recommended that classifications for Wollongong and Newcastle be reconsidered for the purpose of grant funding eligibility. It noted that these cities sit outside the current definition of metropolitan or regional and suggested that establishing a separate classification may produce a more equitable allocation of grants.<sup>439</sup>
- 5.75** Cr Nelmes also recommended that all grant programs use consistent geography classifications and that a possible third classification for grant eligibility such as 'Gateway City' or 'Second City' be created to capture regional centres such as Newcastle and Wollongong.<sup>440</sup>
- 5.76** Mr Crakanthorp agreed a second city idea has merit and that clear and consistent definitions are important. He advocated for each town and city to be defined and classified overall and that this classification be applied uniformly across all grant programs.<sup>441</sup>
- 5.77** Mr Scully noted he would prefer a third category to be based on region, rather than city but that overall it was important that the classification was consistent across government and consistently applied.<sup>442</sup>

## Alternatives to grant funding

- 5.78** The committee was interested in exploring whether alternative methods of funding local government are preferable over grant funding. In response, local councils called for more consistency and coordination in funding but did not agree on a preferable model.

### Allocating funding according to a formula

- 5.79** Local councils supported the allocation of funds according to a pre-determined and transparent formula but acknowledged different local councils around the State have different needs and were hesitant to propose a particular model.
- 5.80** Mr McMahon from Bega Valley Shire Council, agreed that generally, a known and transparent formula would make planning and managing grants more efficient. He was supportive of funds such as the Stronger Country Communities Fund and the Regional Road Block grant as he said

<sup>437</sup> Evidence, Cr Nelmes, 27 November 2020, pp 5-7.

<sup>438</sup> Evidence, Cr Nelmes, 27 November 2020, p 10.

<sup>439</sup> Submission 102, Wollongong City Council, p 2.

<sup>440</sup> Evidence, Cr Nelmes, 27 November 2020, p 3.

<sup>441</sup> Evidence, Mr Crakanthorp, 27 November 2020, pp 12-14.

<sup>442</sup> Evidence, Mr Scully, 27 November 2020, pp 12-14.

they provide some certainty around how much funding councils will receive. Mr McMahon noted, however, that any funding model would need to take the difference between local government areas into account, including environmental factors and susceptibility to natural disasters.<sup>443</sup>

- 5.81** Mr Mackney from Tweed Shire Council, was in favour of longer-term funding generally so that councils could plan better, noting that 'anything that gets us away from the current, very reactive and inconsistent approach across the various agencies would be of benefit'.<sup>444</sup>
- 5.82** Cr Scott from Local Government NSW described how Federal assistance grants allocate funding based on a transparent formula determined by an independent body. According to Cr Scott, Federal assistance grants do not have an application process but involve:
- an independent body
  - a formula that it undertakes consultation on
  - commissioners who are independent from government.<sup>445</sup>
- 5.83** Cr Scott advocated for the allocation of grants according to some public formula as: 'the main mechanism for awarding grants'. She suggested allocating grants in this way would save hundreds if not thousands of hours of staff time applying for grants and would provide an independent, transparent mechanism for funding allocations.<sup>446</sup>

### **Per-capita**

- 5.84** Generally, local councils were not in support of grants being allocated on a per capita basis when questioned by the committee about this matter.
- 5.85** Mr Michael Edgar, General Manager of The Hills Shire Council, noted that allocating funds on a per capita basis does not take into account the different priorities and needs of councils across the State.<sup>447</sup> Mr Gordon from Penrith City Council, noted that even metropolitan councils across Sydney are very different and a per capita basis would not be appropriate.<sup>448</sup>
- 5.86** Mr Edgar preferred that grant funding be allocated based on the merit of and need for a proposed project, whereas Mr Gordon noted that funding allocations should consider the specific needs and issues of the area in question.<sup>449</sup> Mr Edgar and Mr Head of Hornsby Shire Council, agreed however, that per capita could be one aspect amongst a range of factors that might ensure funding was allocated fairly.<sup>450</sup>

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<sup>443</sup> Evidence, Mr McMahon, 27 November 2020, pp 24-26.

<sup>444</sup> Evidence, Mr Mackney, 27 November 2020, p 25.

<sup>445</sup> Evidence, Cr Scott, 21 September 2020, p 6.

<sup>446</sup> Evidence, Cr Scott, 21 September 2020, pp 5-6.

<sup>447</sup> Evidence, Mr Edgar, 21 September 2020, p 39.

<sup>448</sup> Evidence, Mr Gordon, 21 September 2020, p 40.

<sup>449</sup> Evidence, Mr Edgar, 21 September 2020, p 40; Evidence, Mr Gordon, 21 September 2020, p 40.

<sup>450</sup> Evidence, Mr Edgar, 21 September 2020, p 40; Evidence, Mr Head, 21 September 2020, p 40.

**5.87** Regional councils were similarly doubtful of allocating funding solely on a per capita basis. Ms Oldham argued against the per capita model for funding allocation as it disadvantages regional and rural areas due to their small populations and relatively large asset bases.<sup>451</sup> Similarly, Cr Phillip O'Connor said that Brewarrina Shire Council is not able to compete with other councils on a per capita basis as it is a unique council with a large indigenous population.<sup>452</sup>

### **Minimum funding allocations**

**5.88** Some councils were in support of a minimum funding allocation to each council. Mr Jeff Sowiak, General Manager of Brewarrina Shire Council, for example, supported programs such as the Federal Government's Drought Communities Program which allocated \$1 million to each local council.<sup>453</sup>

**5.89** Others were supportive of the minimum allocation model used in the Stronger Country Communities Fund. Councils argued this funding allocation model meant they did not have to compete with larger, better-resourced councils and that projects that were of value to the community but may not have met the application requirements for other programs were funded.<sup>454</sup> Councils also stated that allocating funding this way reduced the amount of time spent on making applications and recommended the model be used in future.<sup>455</sup>

## **The Stronger Country Communities Fund**

**5.90** As noted in chapter 1, the Department of Regional NSW administers a range of grant programs under the Regional Growth Fund. Regional local councils were broadly in support of these funds, in particular the Stronger Country Communities Fund. In particular, regional councils were supportive of the two-tiered application process and high level of support they received from the Department of Regional NSW.

**5.91** Under the Stronger Country Communities Fund, at least \$3 million was allocated to each local government area in regional New South Wales.<sup>456</sup> This was split across three rounds of funding, with a baseline allocation of \$750,000 for each local government area in the first round and a baseline of \$1.5 million in the second.<sup>457</sup> Mr Hanger, from the Department of Regional NSW, said the program had been established to 'provide a dedicated baseline of funding to every local government area' with weightings for population and remoteness.<sup>458</sup>

**5.92** According to Mr Sowiak, the two-tiered system used in the Stronger Country Communities Fund with simpler guidelines for applications seeking smaller grant payments, worked well.

<sup>451</sup> Evidence, Ms Oldham, 27 November 2020, p 24.

<sup>452</sup> Evidence, Cr O'Connor, 27 November 2020, pp 30-31.

<sup>453</sup> Evidence, Mr Jeff Sowiak, General Manager, Brewarrina Shire Council, 27 November 2020, p 32.

<sup>454</sup> For example: Submission 24, Gunnedah Shire Council, pp 1-2; Submission 41, Bourke Shire Council, pp 1-2.

<sup>455</sup> Submission 59, Leeton Shire Council, p 1.

<sup>456</sup> Evidence, Mr Hanger, 16 October 2020, p 13.

<sup>457</sup> Evidence, Mr Hanger, 16 October 2020, p 31.

<sup>458</sup> Evidence, Mr Hanger, 16 October 2020, p 28.

Brewarrina Shire Council argued that finding multiple quotations for many grant programs is extremely difficult in a remote area so many applications 'fail before they get started'.<sup>459</sup> Mr Sowiak was therefore supportive of the application process for the Stronger Country Communities Fund which allowed council to submit estimates by council staff rather than quotations from external contractors.<sup>460</sup>

**5.93** Regional councils were also supportive of the high level of support they received from the Department of Regional NSW in preparing applications. Brewarrina Shire Council noted that for a number of programs including the Stronger Country Communities Fund, the NSW Government ran proactive briefing sessions and provided support from locally-based liaison staff.<sup>461</sup>

**5.94** Lake Macquarie City Council wrote in support of the level of support they received for grants under the Regional Growth Fund where they noted they are given access to a Business Development Manager who notifies council of grant opportunities, guides project selection and provides additional information. Lake Macquarie City Council were in support of providing local councils with more information on grant applications through early engagement and direct contact with departmental staff.<sup>462</sup>

**5.95** However, some councils were unhappy with round three of the Stronger Country Communities Fund, which allowed grants to be provided directly to community groups.

**5.96** Port Macquarie-Hastings Council noted that round three had been allocated directly to volunteer groups but asserted these groups lacked the resources and abilities to deliver the project so council had been obliged to allocate their own staff to act as project managers. It recommended that future guidelines indicate eligibility more clearly so that councils do not waste time and resources applying for money that is intended for community groups.<sup>463</sup>

**5.97** Richmond Valley Council said that in their view, better outcomes were achieved in the first two rounds as the projects delivered under those rounds were consistent with the council's Community Strategic Plan and priorities of the community.<sup>464</sup>

**5.98** While regional councils wrote in support of the funding they had received under the Stronger Country Communities Fund, the committee also received evidence that the process may have been overly politicised as government MPs provided input into project assessments, but non-government MPs did not.

**5.99** Mr Jonathan Wheaton, Executive Director, Regional Programs, with the Department of Regional NSW, described the input government MPs had as follows:

Each government member was asked to review all of the projects that had been submitted in local government areas that were covered by their electorate. They were asked to review projects against two of the program criteria and asked to rank those

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<sup>459</sup> Submission 47, Brewarrina Shire Council, p 4.

<sup>460</sup> Evidence, Mr Sowiak, 27 November 2020, pp 28; 32.

<sup>461</sup> Submission 47, Brewarrina Shire Council, p 6.

<sup>462</sup> Submission 93, Lake Macquarie City Council, p 3.

<sup>463</sup> Submission 40, Port Macquarie-Hastings Council, p 2.

<sup>464</sup> Submission 38, Richmond Valley Council, p 2.

either low, medium or high in terms of alignment to those criteria. Likewise, we had department staff undertake those same assessments ... Those rankings – the low, medium and high from both the department and the MP – then go through a senior officers panel or a decision panel, which makes the recommendations for the projects.<sup>465</sup>

- 5.100** Mr Wheaton confirmed that it was 'only government MPs or representatives that are in government who are asked to do those assessments' and that 'some MPs had coverage across non-government seats'.<sup>466</sup> Mr Hanger stated that local non-government MPs can provide support for projects but did not have any input into the formal assessment of projects.<sup>467</sup>
- 5.101** Mr Hanger was asked if he was aware of any other grant schemes he administers which involve only government MPs in the assessment process. He replied 'No, not that I am aware of'.<sup>468</sup> On notice, Mr Hanger stated that the round three guidelines for the fund specified that only government MPs would be asked to review projects. He noted further: 'Input from elected government members of parliament is included as part of the process as it is the elected government that is accountable to the public for the decisions that are made'.<sup>469</sup>

### Committee comment

- 5.102** The current system of grant funding to local councils is not fit for purpose. There is no overall planning or scheme and councils are subject to a large number of vastly different grants across many different agencies, all with different requirements, processes and timeframes.
- 5.103** The committee considers that funding local government through grant programs is extremely inefficient and does not represent value for money for the people of New South Wales. It is also prone to over-politicisation and pork-barrelling.
- 5.104** Further, the increasing over-reliance on grants to fund community services and infrastructure is a worrying trend. The NSW Government has devolved itself of a key responsibility of government - managing funding and providing services for the people of New South Wales, and placed this responsibility on local government. Local councils are then forced to compete with each other for resources.
- 5.105** While the committee notes evidence from regional councils that they are grateful for the renewed focus on regional funding, it is our view that many councils were reluctant to speak out about problems with grants for fear of missing out in future.
- 5.106** The committee is particularly concerned about the emerging trend by the NSW Government to consult only with government MPs on local government grant programs. This took place for both the Stronger Communities Fund (see chapter 4) and the Stronger Country Communities

<sup>465</sup> Evidence, Mr Jonathan Wheaton, Executive Director, Regional Programs, Department of Regional NSW, 16 October 2020, p 28.

<sup>466</sup> Evidence, Mr Wheaton, pp 28-29.

<sup>467</sup> Evidence, Mr Hanger, 16 October 2020, pp 29; 31.

<sup>468</sup> Evidence, Mr Hanger, 16 October 2020, pp 29-30.

<sup>469</sup> Answers to questions on notice, Mr Chris Hanger, Deputy Secretary, Public Works Advisory and Regional Development, and Mr Jonathan Wheaton, Executive Director, Regional Programs, Department of Regional NSW, 12 November 2020, p 13.

Fund. The committee is of the view that this practice is completely unacceptable, and if local MPs are to be allowed input into grant schemes to advocate for their communities, then MPs of all political persuasions should be consulted.

- 5.107** Councils are reliant on grants for roughly 30 per cent of their budgets but often have no way of knowing which applications will be successful or how much money they will receive per year.
- 5.108** The committee was struck by evidence from local councils regarding how expensive grant applications are and how much staff time is dedicated to identifying and applying for grants. The complex landscape of grant funding has funded an entire consultancy sector and is extremely wasteful. It also has a significant impact on the ability of councils to plan and budget as well as deliver services. Vast inconsistencies across programs and sometimes within programs mean councils must effectively start each application from scratch.
- 5.109** The committee did not receive any evidence on the costs of grant funding to the NSW Government but given the costs to councils, the number of different grant programs and the processes government must go through to assess and acquit grants, the cost to the NSW Government is likely to be even higher.
- 5.110** In light of the evidence received, the committee calls on the NSW Government to review its current system of grant programs with a view to completely overhauling grant funding as a method of funding local government. The committee recommends that the NSW Government completely rethink its approach to allocating public money by grants and return to funding local councils more directly and openly. The great majority of local government funding should be based on a publicly available pre-determined formula whereby each local government area is guaranteed a set annual amount of funding with factors such as population, asset base, and community need, taken into consideration. This would reduce the waste and expense of grant programs, to both local and State government, and reduce the risk of politicisation of grants.
- 5.111** Currently, NSW Government grant programs do not take into account and do not align with local council strategic plans. In fact grant programs are largely isolated from local government priorities and processes. Local councils have already done the work of identifying their community's needs. These are set out in strategic plans that councils are legislatively required to create. It is our view that funding should be linked to these strategic plans. The committee therefore recommends that the NSW Government work closely with local councils to ensure providing the bulk of its funding is linked to local government priorities within their strategic plans.
- 5.112** There is no doubt that predictable and longer term funding of local councils that is linked to their existing strategic planning documents would provide immediate and significant benefits to local councils and through them to communities right across New South Wales. This would enable rational planning of construction timelines, careful and efficient management of contracts and planning approvals and significant resources savings at a council and state government level.
- 5.113** Almost everyone would benefit from this. The only cost of such a move would be borne by the growing, and largely unproductive, grants writing industry and government MPs and Ministers who may lose a number of local media opportunities to celebrate projects funded by state government money. This is a small cost to pay for good government.

- 5.114** Even with this reform there will remain a role for state government grants in the local council sector for specific projects as well as to deliver specific state government priorities. All such grant programs must meet far higher standards as set out in the earlier chapters of this report.

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### **Recommendation 10**

That the NSW Government, in close consultation with Local Government NSW, overhaul its current model of grant funding to local councils to move towards providing the bulk of its funding through a funding formula that:

- is linked to local councils' existing strategic planning documents and priorities
- acknowledges the additional costs and needs of regional and remote councils
- is predictable and provides multi-year funding commitments
- is regularly and publicly reviewed to ensure it meets the needs of the sector.

- 5.115** While the committee believes a fundamental change in the way the NSW Government allocates funding to local government is required, if grant programs continue, a number of changes can be made to reduce the burden of applications and improve the accountability and transparency of processes.

- 5.116** The challenges of navigating the unwieldy grants landscape are exacerbated by unrealistic and chaotic timeframes. Councils are not given enough time to prepare applications or deliver projects and are subject to significant delays in the assessment and announcement of projects. Where grant programs continue to be used, the burden of applying for grants can be reduced with the use of a two stage application process, so that an initial expression of interest is submitted before progressing to a full application.

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### **Recommendation 11**

That the NSW Government consider using staged application processes for large grants so that applicants submit an initial expression of interest and are shortlisted to progress through to a full application.

- 5.117** Managing grants is even more challenging when funding is announced without consulting the successful local council first. Councils must take on the costs of delivering and managing the project, sometimes at the expense of other planned projects. The committee is of the view that, at an absolute minimum, councils must be informed about proposed funding and must accept it before an announcement is made.

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### **Recommendation 12**

That the NSW Government ensure that no local government grant funding announcement is made before the recipient has been informed and accepts.

- 5.118** The committee notes with concern evidence that the City of Newcastle and Wollongong City Council consistently miss out on potential grant funding as they are ineligible. It is unfair to the

people who live there to miss out on funding because they are not considered either metro or regional. Eligibility for Newcastle and Wollongong should be standardised across programs to prevent these councils falling through the gaps.

- 5.119** The NSW Government should therefore review all eligibility classifications across grant programs and investigate the inclusion of a third category for grant programs, such as 'gateway city' to accommodate regional centres that may be considered both metro and regional. Clearly this issue should also be considered closely in developing any new funding formula consistent with Recommendation 10 above.
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### **Finding 13**

That it is unacceptable for large regional cities, such as Wollongong and Newcastle, to be excluded when complementary grants programs are designed for both metropolitan and regional areas, such as the Greater Sydney Sports Facility Fund and Regional Sports Infrastructure Fund.

### **Recommendation 13**

That the NSW Government review and standardise eligibility classifications across grant programs, including investigating whether to include a third category of 'gateway city' in its classification of regions.

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- 5.120** The range of and inconsistency between grant programs means it is very difficult to find accurate information on the administration of programs. To improve transparency and oversight, the committee recommends that the NSW Government table half-yearly reports to the Legislative Council on all current grant programs, including guidelines, amounts available and amounts paid. It also recommends that this information be provided on a publicly available online dashboard and regularly updated.
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### **Recommendation 14**

That the Department of Premier and Cabinet table half-yearly reports to the Legislative Council on all current grant processes, including:

- guidelines for open and upcoming grant programs and any revisions to these guidelines
- total amount available for the round and approximate amounts available to each applicant
- updates on amounts paid for each project for the last quarter.

Further, that the Department of Premier and Cabinet publish this information on an online dashboard and update it regularly.

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- 5.121** The committee accepts evidence that local councils are subject to regulatory oversight and obligations to use grant money appropriately under the *Local Government Act 1993*. However, we were concerned to hear that the Office of Local Government is not subject to routine probity audits. No-one is responsible for auditing the Office of Local Government's management of grant funding, including whether it has distributed money according to guidelines or with
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appropriate documentation. This has further strengthened the perception present in local councils that if the governance requirements currently in place for councils were applied to the Office of Local Government, the Office would be placed in administration. The Office of Local Government should be required to undergo probity audits of its own processes and record-keeping for each program and funding round it administers.

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**Recommendation 15**

That the NSW Government ensures the Office of Local Government is audited for each grant funding round it administers, including checks to ensure whether the Office has complied with the relevant guidelines, ensured programs are subject to probity audits, and kept accurate and sufficient records.

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## Appendix 1 Submissions

<b>No.</b>	<b>Author</b>
1	Greek Cultural Association Inc.
2	Ms Cathy Merchant
3	Cr Craig Davies, Mayor Narromine Shire Council and Chair of the Orana Joint Organisation of councils
4	Mid-Western Regional Council
5	Halls Accounting Pty Ltd
6	Inverell Shire Council
7	Bathurst Regional Council
8	Coolamon Shire Council
9	Narrandera Shire Council
10	Port Stephens Council
11	Local Government NSW
12	Mosman Municipal Council
13	Tenterfield Shire Council
14	Narrabri Shire Council
15	Goulburn Mulwaree Council
16	Hornsby Shire Council
17	Canterbury Bankstown Council
18	Blayney Shire Council
19	Bland Shire Council
20	NSW Council of Social Service (NCOSS)
21	Ms Sonja Elwood
22	Name suppressed
23	NSW Auditor General
24	Gunnedah Shire Council
25	Name suppressed
26	Boambee East Community Centre
27	Name suppressed
28	Lismore City Council
29	Temora Shire Council
30	Cabonne Council
31	Dr Darren Heinrich

<b>No.</b>	<b>Author</b>
32	Woolgoolga Surf Life Saving Club
33	Coffs Harbour Community Men's Shed Inc.
34	Jaybees Entertainment
35	Screenwave
36	Bega Valley Shire Council
36a	Bega Valley Shire Council
37	Theatre Network NSW, MusicNSW, Ausdance NSW and Regional Arts NSW
38	Richmond Valley Council
39	Central NSW Joint Organisation
40	Port Macquarie Hastings Council
41	Bourke Shire Council
42	Lachlan Shire Council
43	Cr Ben Shields, Mayor of Dubbo Regional Council
44	Griffith City Council
45	Ballina Shire Council
46	Tweed Shire Council
47	Brewarrina Shire Council
48	Snowy Valleys Council
48a	Snowy Valleys Council
49	Federation Council
50	Yass Valley Council
51	National Association for the Visual Arts (NAVA)
52	Kyogle Council
53	Canberra Region Joint Organisation
54	NSW Joint Organisations
55	Dubbo Golf Club
56	Netball NSW
57	Confidential
58	MidCoast Council
59	Leeton Shire Council
60	Namoi Unlimited
61	Penrith City Council
62	Nambucca Valley Youth Services Centre
63	Sydney Improvised Music Association
64	City of Newcastle

<b>No.</b>	<b>Author</b>
65	Bereta Laffe Group
66	School Bands Australia
67	The Hills Shire Council
68	Clarence Valley Council
69	Wentworth Shire Council
70	Cessnock City Council
71	Mr Sam McNally
72	Confidential
73	Department of Regional NSW
74	Mr Phillip Johnston
75	Mr Rick Robertson
76	Ms Simone Waddell
77	Hunter Joint Organisation
78	Ms Angelika Erpic
79	Ms Sarah Cattini
80	The Hon. John Barilaro MP
81	Writing NSW
82	Cr Darcy Byrne, Mayor of Inner West Council
83	Name suppressed
84	Mr Ian Docker
85	Mrs Carol Edds
86	Mr Jonathan Zwartz
87	Mr Alex Masso
88	Name suppressed
89	Mr George Tulloch
90	Live Music Office
91	Name suppressed
92	Independent Commission Against Corruption NSW
93	Lake Macquarie City Council
94	Mrs Kylie Docker
95	Department of Premier and Cabinet
96	Waverley Council
97	Cr Greg Conkey, Mayor of Wagga Wagga
98	Mr Tim Crakanthorp MP, Member for Newcastle
99	Mr Paul Scully MP, Member for Wollongong

<b>No.</b>	<b>Author</b>
100	The Hunters Hill Trust
101	Inner West Council
102	Wollongong City Council
102a	Wollongong City Council
103	Confidential
104	South East Region Conservation Alliance
105	Confidential
106	Mr David McAlister
107	Nambucca Valley Council
108	Mr Frank Ross
109	Queanbeyan-Palerang Regional Council
110	Mr John Knight
111	A Better Eurobodalla
112	Dr Clare Buswell
113	Ms Tamara Smith MP
114	Central Coast Council
115	Blue Mountains City Council

## Appendix 2 Witnesses at hearings

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Monday 21 September 2020</b> <b>Macquarie Room</b> <b>Parliament House, Sydney</b>	Cr Linda Scott	President, Local Government NSW
	Cr Khal Asfour	Mayor, Canterbury-Bankstown Council
	Cr Darcy Byrne	Mayor, Inner West Council
	Mr Steven Head	General Manager, Hornsby Shire Council
	Mr Glen Magus	Director Corporate Support, Hornsby Shire Council
	Mr John Gordon	City Presentation Manager, Penrith City Council
	Mr Michael Edgar	General Manager, Hills Shire Council
	Mrs Chanda Saba	Chief Financial Officer, Hills Shire Council
<b>Friday 16 October 2020</b> <b>Jubilee Room</b> <b>Parliament House, Sydney</b>	Mr Tim Hurst	Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment
	The Hon Peter Hall QC	Chief Commissioner, Independent Commission Against Corruption
	Mr Chris Hanger	Deputy Secretary, Public Works Advisory and Regional Development, Department of Regional NSW
	Mr Jonathan Wheaton	Executive Director, Regional Programs, Department of Regional NSW
	Ms Margaret Crawford	Auditor-General of New South Wales, Audit Office of New South Wales
<b>Friday 23 October 2020</b> <b>Jubilee Room</b> <b>Parliament House Sydney</b>	Mr Scott Stanton	Acting Deputy Auditor-General of New South Wales, Audit Office of New South Wales
	Ms Claudia Migotto	Assistant Auditor-General, Performance Audit, Audit Office of New South Wales
	Ms Sarah Cruickshank	Former Chief of Staff, Office of the NSW Premier

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Friday 27 November 2020</b>	Cr Nuatali Nelmes <i>(via videoconference)</i>	Lord Mayor, City of Newcastle
<b>Macquarie Room</b>		
<b>Parliament House, Sydney</b>	Mr Simon Massey <i>(via videoconference)</i>	Economic Strategy and Government Relations Manager, City of Newcastle
	Mr Paul Scully MP	Member for Wollongong
	Mr Tim Crakanthorp MP	Member for Newcastle
	Ms Shelley Oldham <i>(via videoconference)</i>	General Manager, Lismore City Council
	Mr Tim Mackney <i>(via videoconference)</i>	Manager Infrastructure Delivery, Tweed Shire Council
	Mr Anthony McMahon <i>(via videoconference)</i>	Director, Assets and Operations, Bega Valley Shire Council
	Mr Gerard Van Emmerik <i>(via videoconference)</i>	Manager Community & Economic Development, Federation Council
	Cr Phillip O'Connor <i>(via videoconference)</i>	Mayor, Brewarrina Shire Council
	Mr Jeff Sowiak <i>(via videoconference)</i>	General Manager, Brewarrina Shire Council
	Ms Jacquelyn Richards <i>(via videoconference)</i>	Portfolio General Manager, Community Choice, Queanbeyan-Palerang Regional Council
	Cr Bill West	Regional Prosperity Portfolio Mayor, Central NSW Joint Organisation
	Cr Rowena Abbey <i>(via videoconference)</i>	Chair, Canberra Region Joint Organisation and Chair, NSW Joint Organisations Chairs' Forum
	Ms Kalina Koloff <i>(via videoconference)</i>	Chief Executive Officer, Canberra Region Joint Organisation
	Cr Bob Pynsent <i>(via videoconference)</i>	Chair, Hunter Joint Organisation
	Mr Joe James	Chief Executive Officer, Hunter Joint Organisation
	Mr Steve Wilson	Director of Regional Policy and Programs, Hunter Joint Organisation

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Wednesday 9 December 2020</b>	Mr Matthew Crocker	Former Policy Director, Office of the NSW Premier
<b>Macquarie Room</b>		
<b>Parliament House, Sydney</b>	Ms Laura Clarke	Former Deputy Chief of Staff, Office of the Deputy Premier
	Mr Kevin Wilde	Former Chief of Staff, Office of the Former Minister for Local Government
	Mr Tony Harris	Former NSW Auditor-General
<b>Monday 01 February 2021</b>	Mr David Clarkson	Board Member, Theatre Network NSW
<b>Jubilee Room</b>		
<b>Parliament House, Sydney</b>	Ms Michelle Silby <i>(via videoconference)</i>	Executive Director, Ausdance NSW
	Ms Elizabeth Rogers <i>(via videoconference)</i>	Chief Executive Officer, Regional Arts NSW
	Mr John Wardle	Consultant, Live Music Office
	Ms Penelope Benton <i>(via videoconference)</i>	Acting Chief Executive Officer, National Association for the Visual Arts
	Ms Jane McCredie	Chief Executive Officer, Writing NSW
	Ms Kate Foy	Deputy Secretary, Community Engagement, Department of Premier and Cabinet
	Mr Chris Keely	Executive Director, Create NSW, Department of Premier and Cabinet
	Ms Annette Pitman	Head of Create Infrastructure, Create NSW, Department of Premier and Cabinet
	Mr Chris Hanger	Deputy Secretary, Public Works Advisory and Regional Development, Department of Regional NSW
	Mr Jonathan Wheaton	Executive Director, Public Works Advisory and Regional Development, Regional Programs, Department of Regional NSW
<b>Monday 08 February 2021</b>	The Hon John Barilaro MP	Deputy Premier and Minister for Regional NSW
<b>Jubilee Room</b>		
<b>Parliament House, Sydney</b>	Mr Tim Hurst	Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment



## Appendix 3 Working advice notes

Documents tabled in the Legislative Council under standing order 52 on 25 November 2020.

(7)(a)6



**Office of the Premier**

**Sarah Lau**

**Date to Premier:**                      **Date to Adviser:**                      **Due Date:**

**Issue**  
Approval of funding for metro local councils from remaining local council merger funds.

**Current situation**

Metro open spaces projects

- There is \$25.34m in funding to spend on open spaces projects for metro local councils who engaged constructively in the merger process.
- The PLO team has consulted with local members and has pulled together the list of open spaces projects in **Table 1** for your approval. All projects have been planned by the relevant councils and are ready to go, our funding will help to bring the timing of these projects forward.

**Table 1: Open spaces projects for metro local councils**

Council	Projects	Funding \$m	Member consulted
Burwood	1) Henley Park Upgrades - sports field lighting, drainage and turf improvements, Futsal pitch, refurbish amenities (\$2.6m)	\$2.60	John Sidoti
Canada Bay	1) Ron Routley Oval Concord - synthetic soccer pitch and all weather surface (\$4.3m total cost, Council prepared to fund \$2m).	\$2.30	John Sidoti
Lane Cove	1) Mindarie Park play equipment (\$1m) 2) Tantallon Grandstand rebuild (\$450,000) 3) Greendale Scout Hall - new floor and walls (\$107,000) 4) Longueville Sporting Club - new roof (\$180,000) 5) Blackman Off-Leash Dog Area - 2,500m <sup>2</sup> off leash dog area at lower end of Blackman Park (\$50,000)	\$1.79	Min Roberts
Ryde	1) Meadowbank Ovals 2 & 3 - facility building (\$700,000) 2) ANZAC Park, West Ryde for major upgrades, and soft-fall installation (\$200,000) 3) Meadowbank Park district playground (\$500,000) 4) Ryde Outdoor Youth Space - Skate Park (\$400,000) 5) Morrison Bay Park - new basketball court and running track (\$500,000) 6) Santa Rosa Park, Ryde for BBQ installations and amenity upgrades (\$50,000)	\$2.35	Min Dominello
Randwick	1) Coogee Surf Life Saving Club upgrade (\$2.58)	\$2.58	Bruce Notley-Smith
Waverley	1) Tamarama Gully - remediation of landfill and improved access (\$600,000) 2) Tamarama Ecological Restoration Framework and Action Plan (\$120,000)	\$2.00	Bruce Notley-Smith Min Upton



## Office of the Premier

	3) Bronte Ecological Restoration and Action Plan (\$155,000) 4) Bronte Gully and Tamarama Gully - creek mediation (\$225,000) 5) North Bondi Surf Life Saving Club upgrade (\$500,000) 6) Clarke Reserve Vaucluse - upgrade to playground and fencing (\$100,000) 7) Bondi Beach playground - design work for upgrade (\$300,000)		
Georges River	1) Peakhurst Park - new synthetic surface (\$2m) 2) Hurstville Oval - expansion of Booth Saunders Pavilion building (2.5m) 3) Poulton Park - new synthetic surface and sports amenities building (\$3m) 4) Claydon Reserve - new synthetic surface (\$2m)	\$9.50	Mark Couré
<b>TOTAL SPEND</b>		<b>\$23.12m</b>	

- These projects are all open spaces/ rec focussed and work well with the Govt's liveability theme. If approved, we will work with local members to get announcements out quickly.
- For the Georges River Council projects, time has been set aside in your calendar on 28 June to announce these with Mark Couré at Community Cabinet.

#### Resolution of Hornsby/Parramatta issue

- \$90m has been allocated for 2 parklands projects for Hornsby Council (\$50m from ConFund for the rehabilitation of Hornsby Quarry and \$40m from merger funds for the rehabilitation of the Westleigh Sydney Water site). The Office of Local Government (OLG) is working on the funding agreement for these projects and I expect Min Kean will announce them shortly.
- We also recommend you approve **\$16m** for a new aquatic facility and water play park in the Epping area for Parramatta City Council. This funding is broadly equivalent to the s.94 contributions owned to them by Hornsby Council. Parramatta has indicated they will consider dropping their legal action on the s.94 contributions owned to them if this funding is provided.

#### Approval of amended funding guidelines

- To enable this funding to go out, you will need to approve 2 updated funding guidelines.
- There is one guideline for projects (Stronger Communities) and one for implementation funds (New Council Implementation). Only minor changes have been made to the guidelines to:
  - Enable funding to be provided to councils subject to a merger proposal, not just councils which were merged.
  - Enable additional implementation funding to be provided to regional councils, previously this was capped at \$5m.
  - Extend the timeframes for spending the funding by one year, so that councils will be required to spend or commit funding by end 2019, rather than end 2018.
- Clean copies of the updated guidelines are at **Tabs 1 and 2**.
- Under Cabinet's July 2017 decision, amendments to the funding guidelines need to be approved by you, the DP and Min Upton. OLG has prepared a brief for you to sign approving the updated guidelines. Once you have signed, the DP and Min Upton will sign the brief. Once finalised, they will be published on OLG's website.
- These guidelines will also cover the \$61.5m in funding for the 11 merged regional councils. The DP's Office is currently finalising the allocation of these funds.
- The majority of the \$140.84m remaining in merger funds should be announced late June/ early July.



Office of the Premier

Recommendations:

- Approve the proposed funding at Table 1 for open spaces projects for metro local councils and \$16m for a new aquatic facility and water play park for Parramatta City Council.
- Sign the attached brief approving the updated funding guidelines for the local council merger funds.

Chief of Staff / \_\_\_\_\_ Comments

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Premier's Comments - Approved / Noted / Not Approved

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Office of the Premier

(7)(a) 8

Sarah Lau/ Matt Crocker

Date to Premier:

Date to Adviser:

Due Date:

**Issue**

Approval of final funding for metro local councils from remaining local council merger funds.

**Current situation**

- Parramatta Council has confirmed they will halt their legal action against Hornsby Council re s.94 contributions on the basis they will receive \$16m in funding for a pool upgrade in the Epping area. Damien Tudehope and Min Dominello are both very supportive of this project.
- John Sidoti, Mark Coure and Min Roberts have requested changes to which projects receive funding in their electorates. Changes are highlighted in Table 1 below:
  - Canada Bay Council would receive a further \$70,000 for park upgrades. This would bring total funding for Canada Bay Council to \$2.37m.
  - Georges River Council would still receive \$9.5m in total, but 3 of the projects would change. You are announcing this funding on 28 June at Community Cabinet with Mark Coure and Min Upton.
  - Lane Cove Council would receive \$940,000 less funding in total, but an additional \$150,000 would be spent on replanting flowers (a \$1m park upgrade that was to be funded is now being funded by Min Roberts via the Open Spaces fund).
  - Hunters Hill Council would receive \$1m for a park upgrade. I raised concerns with Min Roberts about rewarding Hunters Hill Council in light of the Council's legal action against the mergers, but Min Roberts has assured me this park is a key priority for the local community and is not being supported by the Council. On the basis that Lane Cove Council would now be receiving less funding, I suggest you support this funding for Hunters Hill Council. Min Roberts has confirmed he will make this work.
- With the previously approved projects and those in Table 1, there would be around \$3,000 left of the \$79m allocated from the merger funds for metro councils. As previously advised, the DP's Office is also working at finalising their allocated funding for the merged regional councils.

**Table 1: Final funding for metro local councils**

Council	Projects	Funding \$m	Member consulted
Parramatta	1) Dence Park - New aquatic facility and water play park	\$16	Damien Tudehope
Canada Bay	1) Goddard Park - Upgrade to amenities block	0.70	John Sidoti
Georges River	1) Gannons Park Stage 3 - Irrigation, resurfacing of 8 fields, holding tanks, treatment plant and drainage works (\$1m) 2) Gannons Park - Sports amenities building (\$800,000) 3) Hurstville Oval - Expansion of Booth Saunders Pavilion building (\$2.2m) 4) Poulton Park - New synthetic surface and sports amenities building (\$3m) 5) Hurstville Golf Course - New clubhouse, reconstruction of 6 greens and new pathways (\$2.5m)	\$9.50	Mark Coure
Lane Cove	1) Replanting of Epping Road azaleas (\$150,000) 2) Tantallon Grandstand rebuild (\$450,000) 3) Greendale Scout Hall - new floor and walls (\$107,000) 4) Longueville Sporting Club - new roof (\$180,000)	\$0.94	Min Roberts



## Office of the Premier

	5) Blackman Off-Leash Dog Area - 2,500m <sup>2</sup> off leash dog area at lower end of Blackman Park (\$50,000)		
Hunters Hill	1) Upgrade of Boronia Park grandstand and sporting fields (\$1m)	\$1.00	Min Roberts

**Recommendations:**

- Approve the proposed funding at Table 1 for metro local councils to be funded from remaining local government merger funds.

**Chief of Staff / \_\_\_\_\_ Comments**

\_\_\_\_\_

\_\_\_\_\_

**Premier's Comments** - Approved / Noted / Not Approved

\_\_\_\_\_

\_\_\_\_\_



## Appendix 4 Briefing notes approving revised guidelines

Documents tabled in the Legislative Council on 24 September 2020.

Sensitive: NSW Cabinet



Office of  
Local Government

Briefing to Minister

A560169

### Approval of Stronger Communities Fund – tied grant round

#### Purpose: Seeking decision

<b>Topic</b>	Consistent with the decision of Cabinet, approval is necessary for the establishment of a Stronger Communities Fund – tied grant round and associated guidelines.
<b>Key Analysis</b>	Approval is sought for the establishment of and guidelines for a tied grant round of the Stronger Communities Fund, consistent with the Cabinet decision of 27 July 2016.

#### Recommendations

- 1 **The Minister note** that a total of \$212.2 million is available to resolve all outstanding matters from the merger process, including but not limited to additional funding for new councils.
- 2 **The Minister approve** the proposed Stronger Communities Fund – tied grant round and proposed guidelines (**Tab 1**).
- 3 **The Minister seek the endorsement** of the Cabinet Standing Committee on Expenditure Review (ERC) or equivalent process for the proposed utilisation of the funds and guidelines, consistent with the decision of Cabinet.

#### Timeframes

The funds have to be reallocated during 2017-18.

#### Key reasons

##### On 27 July 2017 Cabinet agreed to reallocate merger funding for mergers that would no longer proceed

Cabinet on 27 July 2017 agreed that the Minister for Local Government would redistribute remaining unspent funds previously allocated for pending regional and metropolitan mergers (approximately \$212.2 million) to resolving outstanding matters from the merger process, including to develop guidelines for payments and reimbursements to newly merged councils, pending metropolitan merger councils and regional councils unable to merge following the February 2017 Government decision, in consultation with the Premier and Deputy Premier. It was also agreed by Cabinet that court costs will be funded from this funding envelope.

Cabinet also agreed that the final allocation of unspent funds was to be determined by ERC.

##### The NSW Government has reaffirmed its commitment to continuing to support the 20 new councils

Given the Government's continued commitment to support new councils it has been agreed by the Premier, Deputy Premier and Minister for Local Government, consistent with the Cabinet decision of 27 July, to fund additional support for

## Sensitive: NSW Cabinet

identified community infrastructure projects in the 20 new councils. This will assist these councils to provide the support and services that their communities desire.

**The proposed guidelines focus on tied grant funding to be provided to priority projects**

The proposed guidelines (Attached at **Tab 1**) update the existing Stronger Communities Fund guidelines but have been modified to reflect the more specific focus on tied grant funding projects.

Materials to support the announcement and delivery of the projects will be developed following approval of the establishment of the round and guidelines.

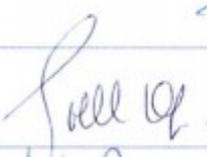
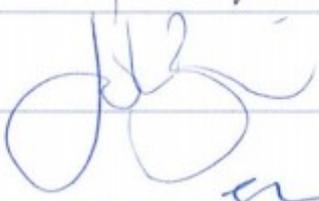
**Guidelines will be developed as necessary to support other outstanding matters as necessary**

As noted above there are a range of outstanding matters from the merger process. It is recommended that guidelines be developed, as necessary, to support allocation of the funding towards these matters.

**Attachments**

Tab number	Name of attachment
Tab 1	Proposed Guidelines for the Stronger Communities Fund – Tied Grant round

**Approval**

Position	Signature and date
Tim Hurst Acting Chief Executive, ph	 4/9/17
Minister for Local Government	 4.9.17
Deputy Premier	 5.9.17
Premier	 8/9/17

SENSITIVE: NSW Cabinet

## Stronger Communities Fund Guidelines – tied grant round

### Purpose of the Stronger Communities Fund

The Stronger Communities Fund was established by the NSW Government to provide new councils with funding for the delivery of projects that improve community infrastructure and services.

The first round of the Stronger Communities Fund has been utilised by communities and councils providing up to \$15 million for each new council to kick start delivery of priority community initiatives.

The tied grant round of the Stronger Communities Fund will provide funding for specific projects, identified by the NSW Government, within the new councils.

### Purpose of these Guidelines

These Guidelines have been developed to assist councils to understand their obligations in relation to the tied grant round of the Stronger Communities Fund, including requirements for governance and reporting.

### Available funding

Stronger Communities tied grants will be provided to new councils created in 2016. Funding will be allocated by the NSW Government based on priorities identified by the NSW Government.

### How the Stronger Communities Fund can be spent?

Funds will be required to be spent on identified projects. Any funding shortfall or funding for ongoing operational activity will be funded by the council.

Councils are responsible for implementing projects, consistent with these Guidelines.

### Variation of identified projects

Any application by the Council to vary the projects to be funded or for the purpose of the tied grant will be considered on case by case basis. Any proposal to vary or modify the tied grant shall be made to the Minister for Local Government.

### Criteria for selecting projects

Councils are to fund projects, identified by the NSW Government, that deliver new or improved infrastructure or services to the community.

Projects must meet the following criteria:

- demonstrate social and/or economic benefits to the community; and
- give consideration to the processes and procedures outlined in the capital expenditure review guidelines issued by the Office of Local Government.

### What are ineligible activities?

The Stronger Communities Fund is not to be used for:

- implementation costs of the new council such information technology systems, financial management systems or change management programs;
- upgrading of council's administration buildings;
- ongoing staff or operational costs;
- projects where the former council had previously allocated funding; and

1

## SENSITIVE: NSW Cabinet

- retrospective funding for work undertaken prior to the establishment of the new council.

**Accountability and acquittal of funds**

Councils will be responsible for the effective governance of the Stronger Communities Fund and will be required to use a project management framework that supports the delivery of projects.

The Stronger Communities Fund is to be spent or committed by 31 December 2018 and all funding acquitted before 30 June 2019.

Councils are accountable for the expenditure of the Stronger Communities Fund in accordance with these guidelines, which require the following:

- The Office of Local Government will prepare a funding agreement to provide Stronger Community funds to councils, including agreement to undertake the necessary projects.
- On signing of the funding agreement and submission of an invoice, the OLG will provide the funds to councils.
- By December 2017, councils are to notify the OLG of their plan for delivering the tied projects under the Stronger Communities Fund. Notification is to include information on governance arrangements, including costings, timeframes (including major delivery milestones) and expected benefits. Councils are to advise the OLG of any changes to the delivery plan.
- Councils are to table progress reports at least quarterly to an ordinary council meeting on the expenditure and outcomes within their Stronger Communities Fund ongoing reporting.
- Councils must provide six monthly reports each year by 31 August and 28 February, to the Office of Local Government on delivery progress and expenditure within the Stronger Councils Fund reporting.
- A final report is to be submitted on the completion of each of the projects, including photos and description of the benefits and outcomes achieved.
- Any interest received from the investment of the funds is to be added to the balance of the fund.
- The Stronger Communities Fund is to be accounted for separately and funds should be reported as an internally restricted asset within the financial statements.
- Any uncommitted funds by 31 December 2018 must be returned to the OLG by 30 March 2019.

**Acknowledgement**

Council will abide by the following:

- Ensure that all public statements relating to the Project or the Grant Funding acknowledge the provision of the funding by the NSW Government.
- Acknowledge the NSW Government's contribution in any written material in relation to the project and in any permanent signage in relation to any projects funded.
- Use the NSW Government logo in accordance with the NSW Government Style guide in any publicity provisions of any kind (including any brochures, signage, advertising and invitations).
- Issue an invitation to the Minister for Local Government (or nominee) to any launch or public event associated with the funding and that where they are

SENSITIVE: NSW Cabinet

able to attend, they are acknowledged as official guests. Where practicable, they should be afforded the courtesy of publicly addressing the event and opening any facility.

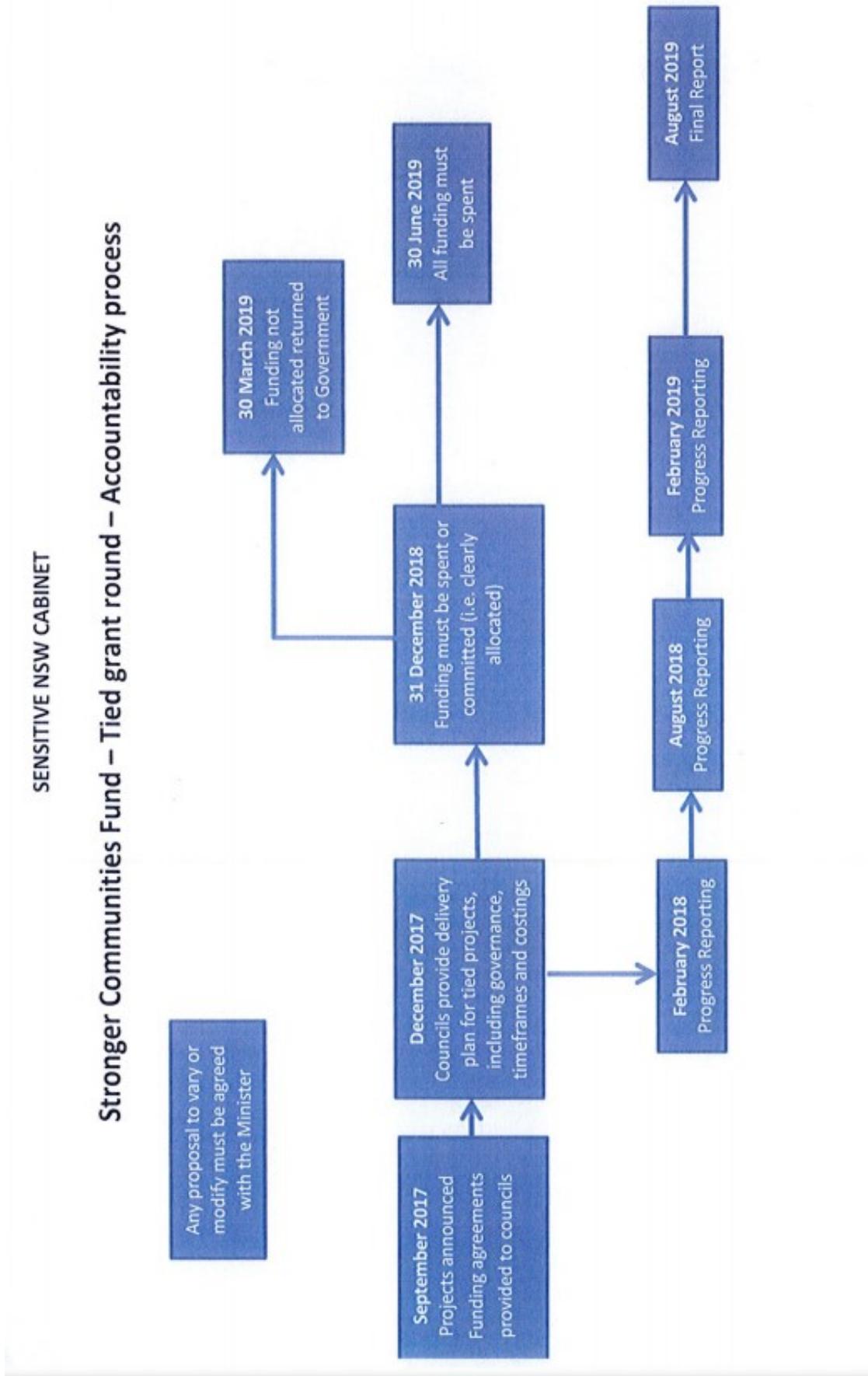
### **Timeframes**

The Stronger Communities Fund allocation must be spent or committed by 31 December 2018 and fully acquitted by 30 June 2019. Any uncommitted funds by 31 December 2018 must be returned to the OLG by 30 March 2019.

Council is to notify the OLG at the earliest time if it will be unable to meet these timeframes. Extensions will be considered on a case-by-case basis.

### **Contacts**

Council's Office of Local Government Relationship Manager is available to provide advice on the Stronger Communities Fund.



Sensitive NSW Cabinet

Office of  
Local Government

Briefing to Minister

A598671

## Stronger Communities and New Council Implementation Fund guidelines

### Purpose: Seeking decision

Topic	Approval to modify the existing Stronger Communities Fund — tied grant round and New Council Implementation Fund guidelines.
Key Analysis	To give effect to the revised approach to implementing the Cabinet decision of 27 July 2017, the guidelines for the two grant programs need to be modified to change dates and eligibility.

### Recommendations

- 1 **That the Minister note** that \$140.84 million (out of an initial \$212.2 million) is available to resolve all outstanding matters from the merger process.
- 2 **The Minister approve** the revised Stronger Communities Fund — tied grant round guidelines (**Tab 1**).
- 3 **The Minister approve** the revised New Council Implementation Fund guidelines (**Tab 2**).
- 4 **The Minister seek the endorsement** of the Premier and Deputy Premier to the proposed revised guidelines, consistent with Cabinet's decision.

### Timeframes

Funds can be expended in either the 2017-18 or 2018-19 financial years.

### Key reasons

#### Guidelines were developed to support payments to councils

In September 2017, the Premier, Deputy Premier and Minister approved the establishment of a Stronger Communities Fund – tied grants round, and associated funding guidelines, consistent with the decision of Cabinet on 27 July 2017.

#### The guidelines did not allow for support to be provided to councils impacted by merger proposals that did not proceed

The current guidelines limit financial support to new councils. To provide support to councils impacted by merger proposals which did not proceed, the existing guidelines will need to be modified. Further funding is to be allocated through both the Stronger Communities Fund – tied grants program and New Councils Implementation Fund.

#### Amendment of the existing program guidelines will be required

The existing guidelines for the Stronger Communities Fund – tied grant round only apply to new councils. Revised guidelines have been prepared (**Tab 1**) to enable grants to be provided to councils impacted by merger proposals that did not proceed. Reporting dates have also been changed consistent with the expected payment schedule.

Further, the existing New Council Implementation Fund guidelines limit funding to new regional councils to \$5 million and do not allow for provision of supplementary support. Some regional councils have prioritised additional implementation funding over additional Stronger Communities grant funding, so the guidelines have been amended (**Tab 2**) to allow additional Implementation Fund payments to these councils, also with amended reporting dates.

### Supporting analysis

#### A funding allocation of up to \$140.84 million remains

Funding to Northern Beaches, Dubbo Regional and MidCoast Councils through the Stronger Communities Fund – tied grant round. In addition, \$10 million has been allocated towards the Far West funding package.

### Context

On 27 July 2017, Cabinet agreed to reallocate merger funding for mergers that would no longer proceed. Cabinet agreed that the Minister for Local Government would redistribute remaining unspent funds previously allocated for pending regional and metropolitan mergers to resolving outstanding matters from the merger process, including to develop guidelines for payments and reimbursements to newly merged councils, pending metropolitan merger councils and regional councils unable to merge, in consultation with the Premier and Deputy Premier.

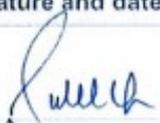
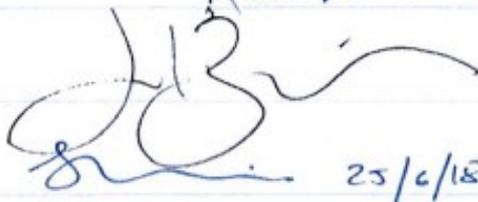
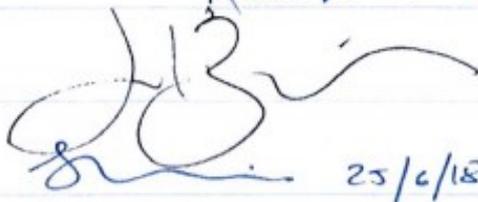
### Attachments

Tab number	Name of attachment
Tab 1	Draft revised Stronger Communities Fund - tied grant round guidelines
Tab 2	Draft revised New Council Implementation Fund guidelines

### Prepared by

Position	Signature and date
Tim Hurst Chief Executive, ph	 12/6/18

### Approval

Position	Signature and date
Minister for Local Government	 27.6.18
Deputy Premier	
Premier	 25/6/18

## Stronger Communities Fund Guidelines – tied grant round

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### **Purpose of the Stronger Communities Fund**

The Stronger Communities Fund was established by the NSW Government to provide new councils with funding for the delivery of projects that improve community infrastructure and services.

The first round of the Stronger Communities Fund has been utilised by communities and councils providing up to \$15 million for each new council to kick start delivery of priority community initiatives.

The tied grant round of the Stronger Communities Fund will provide funding for specific projects, identified by the NSW Government, within the new councils and to councils previously subject to a merger proposal.

### **Purpose of these Guidelines**

These Guidelines have been developed to assist councils to understand their obligations in relation to the tied grant round of the Stronger Communities Fund, including requirements for governance and reporting.

### **Available funding**

Stronger Communities tied grants will be provided to new councils created in 2016 and councils previously subject to a merger proposal. Funding will be allocated by the NSW Government based on priorities identified by the NSW Government.

### **How the Stronger Communities Fund can be spent?**

Funds will be required to be spent on identified projects. Any funding shortfall or funding for ongoing operational activity will be funded by the council.

Councils are responsible for implementing projects, consistent with these Guidelines.

### **Variation of identified projects**

Any application by the Council to vary the projects to be funded or for the purpose of the tied grant will be considered on case by case basis. Any proposal to vary or modify the tied grant shall be made to the Minister for Local Government.

### **Criteria for selecting projects**

Councils are to fund projects, identified by the NSW Government, that deliver new or improved infrastructure or services to the community.

Projects must meet the following criteria:

- demonstrate social and/or economic benefits to the community; and
- give consideration to the processes and procedures outlined in the capital expenditure review guidelines issued by the Office of Local Government.

### **What are ineligible activities?**

The Stronger Communities Fund is not to be used for:

- implementation costs of the new council such information technology systems, financial management systems or change management programs;
- costs associated with the preparation for or legal challenges to merger proposals;

- upgrading of council's administration buildings; or
- ongoing staff or operational costs.

### **Accountability and acquittal of funds**

Councils will be responsible for the effective governance of the Stronger Communities Fund and will be required to use a project management framework that supports the delivery of projects.

The Stronger Communities Fund is to be spent or committed by 31 December 2019 and all funding acquitted before 30 June 2020. Timeframes for any future funding rounds will be as determined within the Funding Agreement.

Councils are accountable for the expenditure of the Stronger Communities Fund in accordance with these guidelines, which require the following:

- The Office of Local Government will prepare a funding agreement to provide Stronger Community funds to councils, including agreement to undertake the necessary projects.
- On signing of the funding agreement and submission of an invoice, the OLG will provide the funds to councils.
- By December 2018, councils are to notify the OLG of their plan for delivering the tied projects under the Stronger Communities Fund. Notification is to include information on governance arrangements, including costings, timeframes (including major delivery milestones) and expected benefits. Councils are to advise the OLG of any changes to the delivery plan.
- Councils are to table progress reports at least quarterly to an ordinary council meeting on the expenditure and outcomes within their Stronger Communities Fund ongoing reporting.
- Councils must provide six monthly reports each year by 31 August and 28 February, to the Office of Local Government on delivery progress and expenditure within the Stronger Councils Fund reporting.
- A final report is to be submitted on the completion of each of the projects, including photos and description of the benefits and outcomes achieved.
- Any interest received from the investment of the funds is to be added to the balance of the fund.
- The Stronger Communities Fund is to be accounted for separately and funds should be reported as an internally restricted asset within the financial statements.
- Any uncommitted funds by 31 December 2019 must be returned to the OLG by 31 March 2020.

### **Acknowledgement**

The funding agreement will specify that funding is conditional on agreement to the Funding Acknowledgment Guidelines for Recipients of NSW Government Grants which can be found at <https://communications.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/files/Communications-and-Engagement/fa6fd6d77a/Funding-Acknowledgement-Guidelines-for-Recipients-of-NSW-Government-Grants.pdf>

In particular, each Council will abide by the following:

- Ensure that all public statements relating to the Project or the Grant Funding acknowledge the provision of the funding by the NSW Government.

- Acknowledge the NSW Government's contribution in any written material in relation to the project and in any permanent signage in relation to any projects funded.
- Use the NSW Government logo in accordance with the NSW Government Style guide in any publicity provisions of any kind (including any brochures, signage, advertising and invitations).
- Issue an invitation to the Minister for Local Government (or nominee) to any launch or public event associated with the funding and that where they are able to attend, they are acknowledged as official guests. Where practicable, they should be afforded the courtesy of publicly addressing the event and opening any facility.

### **Timeframes**

The Stronger Communities Fund allocation must be spent or committed by 31 December 2019 and fully acquitted by 30 June 2020. Any uncommitted funds by 31 December 2019 must be returned to the OLG by 31 March 2020.

Council is to notify the OLG at the earliest time if it will be unable to meet these timeframes. Extensions will be considered on a case-by-case basis.

### **Contacts**

Council's Office of Local Government Council Engagement Manager is available to provide advice on the Stronger Communities Fund.

## New Council Implementation Fund Guidelines

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### **Purpose of the Fund**

The NSW Government has created a number of new councils across the State. The New Council Implementation Fund has been established by the NSW Government to cover the up-front costs of implementing the new council, enabling councils to invest savings directly into community benefits at the earliest opportunity.

Each new council will be provided with up to \$10 million following their commencement.

### **Purpose of these Guidelines**

These Guidelines have been developed to assist councils to understand their responsibilities in relation to the New Council Implementation Fund.

Councils are responsible for making decisions on the allocation of funds to specific activities, consistent with these Guidelines.

New Council Implementation funding will be provided to new councils created as part of the NSW Government's reform program.

Initial funding of \$10 million is provided to a new council formed in metropolitan Sydney or the Central Coast. Initial funding of \$5 million is provided to a new council formed in regional NSW.

The NSW Government can also allocate additional funding on an as-needed basis.

### **How the New Council Implementation Fund can be spent?**

The New Council Implementation Fund will assist councils to cover the up-front costs of implementing the new council. These costs will vary from council to council and it will be up to each council to identify and prioritise the activities for funding.

The following are examples of activities eligible for funding from the New Council Implementation Fund:

- the provision of expert implementation advice, either from a panel of providers established by DPC, or procured locally
- enhancing or integrating systems to support the operation of the new council
- redundancy payments for staff
- signage for the new council
- development and release of the website for the new council
- change management programs to support implementation.

The New Council Implementation Fund has not been designed to cover the costs of major upgrades to information technology systems. Councils are able to spend the fund on major upgrades if that is prioritised over other implementation costs.

### **Process for selecting activities for funding**

As a part of the NSW Government's implementation support program, new councils developed an implementation plan to guide the establishment of the new council.

Projects or activities funded from the New Council Implementation Fund should be consistent with the implementation plan.

### **What are ineligible activities?**

The New Council Implementation Fund is not to be used for:

- merger costs incurred prior to the commencement of the new council
- existing or ongoing staff costs
- upgrades to the council's administrative buildings.

### **Accountability, acquittal of funds and timeframes**

Councils will be responsible for the effective governance of the New Council Implementation Fund and will be required to establish a project management framework that supports the prioritisation and delivery of projects funded.

Councils are accountable for the expenditure of the New Council Implementation Fund in accordance with these guidelines, which require the following:

- The Office of Local Government (OLG) will prepare a funding agreement to provide New Council Implementation funds to councils following their commencement.
- On signing of the funding agreement and submission of an invoice, the OLG will provide the funds to councils.
- By 31 December 2018, councils are to notify the OLG of their plan for allocating the New Council Implementation Fund. Notification is to include information on council's governance arrangements and the projects or activities funded, including key milestones, expected or delivered benefits and a budget.
- Councils are to advise the OLG of any changes to this plan.
- Councils are to table progress reports at least quarterly to an ordinary council meeting on the expenditure of the New Council Implementation Fund, until the funds are spent.
- Councils must provide six monthly reports each year by 31 July and 31 January, to the OLG on delivery progress and expenditure.
- A final report is to be submitted once the funds have been spent, including a description of the benefits achieved.
- Any interest received from the investment of the funds is to be added to the balance of the fund.
- The New Council Implementation Fund is to be accounted for separately and funds should be reported as an internally restricted asset within the financial statements.
- Council is to notify the OLG at the earliest time if it will be unable to meet these timeframes. Extensions will be considered on a case-by-case basis.

### **Contacts**

Council's Council Engagement Manager can provide advice on the New Council Implementation Fund.



## Appendix 5 Table indicating Stronger Communities Fund allocations

Table provided by the Office of Local Government on 22 October 2020 as part of its answers to questions on notice.

Council Name	Date of Funding Agreement	Date of Guidelines	Funding Agreement Amount (\$)	Number of Projects Funded	Expenditure authorised by	Authorisation date	Delegated authority Date	Projects identified for NSW Government by	Project identification conveyed by	Project identification date
Armistead Regional	30/08/2018	27/6/18	\$5,950,000	1	CE OLG	13/07/2018	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	15/06/2018
Burwood	8/08/2018	27/6/18	\$2,600,000	1	CE OLG	6/07/2018	30/5/16	Premier	Senior Policy Advisor	26/06/2018
City of Canada Bay	23/08/2018	27/6/18	\$2,370,000	2	CE OLG	6/07/2018	30/5/16	Premier	Senior Policy Advisor	28/06/2018
Central Coast	14/02/2019	27/6/18	\$2,126,000	4	CE OLG	26/09/2018	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	27/08/2018
	14/02/2019	27/6/18	\$1,918,450	9	CE OLG	6/12/2018	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	28/11/2018
	28/02/2019	27/6/18	\$1,456,070	12	CE OLG	13/02/2019	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	3/01/2019
Cootamundra-Gundagai Regional	26/09/2018	27/6/18	\$5,800,200	24	CE OLG	31/08/2018	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	31/07/2018
	27/6/19	27/6/18	\$149,800	1	CE OLG	27/06/2019	30/5/16	Deputy Premier	Senior Policy Advisor	27/6/19
Dubbo Regional	30/11/2017	8/9/17	\$27,760,000	10	Minister for LG	19/09/2017	N/A	Local Government Minister	Minister for LG	19/09/2017

Council Name	Date of Funding Agreement	Date of Guidelines	Funding Agreement Amount (\$)	Number of Projects Funded	Expenditure authorised by	Authorisation date	Delegated authority Date	Projects identified for NSW Government by	Project identification conveyed by	Project identification date
Edward River	08/11/2018	27/6/18	\$600,000	1	CE OLG	11/09/2018	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	24/08/2018
	19/02/2019	27/6/18	\$4,990,000	7	CE OLG	14/02/2019	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	5/11/2018
Federation	20/12/2018	27/6/18	\$5,590,000	6	CE OLG	12/12/2018	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	5/12/2018
Georges River	25/07/2018	27/6/18	\$9,500,000	5	CE OLG	28/06/2018	30/5/16	Premier	Senior Policy Advisor, Officer of the Premier	28/06/2018
Hilltops	30/08/2018	27/6/18	\$5,762,189	23	CE OLG	26/7/18	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	17/07/2018
	28/06/2019	27/6/18	187,811	1	CE OLG	27/06/2019	30/5/16	Deputy Premier	Senior Policy Advisor	27/06/2019
Hornsby Shire	28/6/18	27/6/18	\$90,000,000	2	CE OLG	27/06/2018	30/5/16	Premier	Senior Policy Advisor	27/06/2018
Hunters Hill	29/11/2018	27/6/18	\$1,000,000	1	CE OLG	25/10/2018	30/5/16	Premier	Senior Policy Advisor	28/06/2018
Lane Cove	30/08/2018	27/6/18	\$937,000	5	CE OLG	31/07/2018	30/5/16	Premier	Senior Policy Advisor	28/06/2018
Mid-Coast	18/02/2019	27/6/18	\$12,500,000	10	CE OLG	12/02/2019	30/5/16	Premier	Senior Policy Advisor	03/01/2019
Murray River	28/2/19	27/6/18	\$4,095,000	7	CE OLG	14/2/19	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	13/2/19
Murrumbidgee	14/2/19	27/6/18	\$5,590,000	11	CE OLG	13/2/19	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	16/11/18

Council Name	Date of Funding Agreement	Date of Guidelines	Funding Agreement Amount (\$)	Number of Projects Funded	Expenditure authorised by	Authorisation date	Delegated authority Date	Projects identified for NSW Government by	Project identification conveyed by	Project identification date
Northern Beaches	30/11/17	8/9/17	\$21,100,000	11	Minister for LG	19/9/17	N/A	Local Government Minister	Minister for LG	19/9/17
City of Parramatta	20/11/18	27/6/18	\$16,000,000	1	CE OLG	9/11/18	30/5/16	Premier	Senior Policy Adviser	6/11/18
Queanbeyan – Palerang Regional	23/11/18	27/6/18	\$5,489,780	23	CE OLG	20/11/18	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	20/11/18
	19/2/19	27/6/18	\$99,780	5	CE OLG	13/2/19	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	6/2/19
City of Randwick	8/2/19	27/6/18	\$2,580,000	1	CE OLG	22/1/19	30/5/16	Premier	Senior Policy Adviser	25/6/18
City of Ryde	30/8/18	27/6/18	\$2,350,000	6	CE OLG	13/7/18	30/5/16	Premier	Senior Policy Adviser	25/6/18
Snowy Monaro	22/11/18	27/6/18	\$5,250,793	16	CE OLG	20/11/18	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	20/11/18
	19/2/19	27/6/18	\$339,000	4	CE OLG	14/2/19	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	6/2/19
Snowy Valleys	20/12/18	27/6/18	\$5,695,000	27	CE OLG	18/12/18	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	17/12/18
	25/1/19	27/6/18	\$255,000	5	CE OLG	22/1/19	30/5/16	Deputy Premier	Deputy Chief of Staff, Director of Policy	17/12/18
Waverley	5/2/19	27/6/18	\$500,000	1	CE OLG	17/12/18	30/5/16	Premier	Senior Policy Adviser	25/6/18
	27/2/19	27/6/18	\$1,500,000	6	CE OLG	26/2/19	30/5/16	Premier	Senior Policy Adviser	20/02/19



## Appendix 6 Minutes

### Minutes no. 31

Friday 3 July 2020

Public Accountability Committee

Via teleconference at 4:33 pm

#### 1. Members

Mr Shoebridge, *Chair*

Mr Borsak, *Deputy Chair*

Mr Graham

Mrs Houssos

Mr Khan

Mrs Ward

#### 2. Draft minutes

Resolved, on the motion of Mrs Houssos: That draft minutes no. 30 be confirmed.

#### 3. Consideration of terms of reference

The Chair tabled the letter proposing the self-reference:

#### 4. Integrity, efficacy and value for money of NSW Government grant programs

1. That the Public Accountability Committee inquire into and report on the integrity, efficacy and value for money of NSW Government grant programs, and in particular:

- (b) the range and availability of funding programs, including but not limited to:
  - (i) discretionary grants funds such as the Premier's Discretionary Fund and the Deputy Premier's Miscellaneous Grants
  - (ii) local government funding such as the Stronger Communities Fund and Stronger Country Communities Fund,
  - (iii) arts funding such as the Regional Cultural Fund,
  - (iv) sports funding such as the Greater Sydney Sports Facility Fund,
  - (v) Jobs for NSW funding, including the review into Jobs for NSW,
- (b) the manner in which grants are determined, including:
  - (i) the oversight of funding determinations,
  - (ii) the transparency of decision making under grants schemes,
  - (iii) the independence of the assessment of projects,
  - (iv) the role of Members of Parliament in proposing projects for funding,
  - (v) the scope of Ministers' discretion in determining which projects are approved,
- (e) measures necessary to ensure the integrity of grants schemes and public confidence in the allocation of public money, and
- (f) any other related matter.

2. That the Committee report by 31 March 2021.

Resolved, on the motion of Mr Graham: That paragraph 1(a) of the terms of reference be amended by inserting the words 'and the Regional Sports Infrastructure Fund' at the end of subsection (iv).

Mrs Ward moved: that the committee adopt the terms of reference as amended but defer the commencement of the inquiry until after the COVID-19 pandemic.

Question put.

The committee divided.

Ayes: Mrs Ward

Noes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Khan, Mr Shoebridge

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That the committee adopt the terms of reference as amended.

## 5. Conduct of the inquiry into the integrity, efficacy and value for money of NSW Government grant programs

### 5.1 Proposed timeline, submission closing date and stakeholder list

Resolved, on the motion of Mrs Houssos: That the Chair, in consultation with the secretariat, circulate a proposed inquiry timeline and stakeholder list for the committee's in principle agreement via email.

### 5.2 Advertising

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

It is no longer standard practice to advertise in the print media. The committee should pass a resolution if it wishes to do so.

### 5.3 Hearing dates

Resolved, on the motion of Mr Borsak: That the Chair, in consultation with the secretariat, liaise with members via email to canvass proposed hearing dates.

## 6. Adjournment

The committee adjourned at 4:42 pm. *Sine die*.

Anthony Hanna  
Committee Clerk

## Minutes no. 33

Monday 17 August 2020

Public Accountability Committee

Macquarie Room, Sydney at 9:19 am

### 1. Members

Mr Shoebridge, *Chair* (via teleconference until 11.43 am; in person from 11.43 am)

Mr Borsak (from 9.36 am)

Mr Graham (from 9.19 am to 10.52 am; and from 12.10 pm to 12.56 pm)

Mrs Houssos (participating from 10.52 am)

Mr Khan

Mr Mason-Cox (via teleconference)

Mr Searle (substituting for Mrs Houssos)

Ms Sharpe (participating from 9.19 am to 11.07 am; and from 11.20 am to 12.56 pm)

Mrs Ward

### 2. Draft minutes

Resolved, on the motion of Mr Searle: That draft minutes no. 32 be confirmed.

### 3. Correspondence

The committee noted the following correspondence:

**Received:**

- 20 July 2020 – Email from Ms Alana Skibola, Executive Assistant to Deputy Secretary, Better Regulation Division, Department of Customer Service, to the secretariat requesting partial confidentiality for Tab A of the Better Regulation Division's answers to questions on notice arising from the hearing on 12 June 2020
- 23 July 2020 - Letter from the Hon Adam Marshall MP, Minister for Agriculture and Western New South Wales, to the Chair enclosing the Minister's post hearing responses from the hearing on 15 June 2020
- 24 July 2020 – Letter from the Hon Brad Hazzard MP, Minister for Health and Medical Research, to the Chair enclosing the Minister's post hearing responses from the hearing on 29 June 2020
- 30 July 2020 – Email from Ms Kathryn Gong, Special Projects Manager, Foodbank NSW & ACT, declining the committee's invitation to give evidence on 17 August 2020
- 5 August 2020 – Letter from the Hon Paul Scully MP, Member for Wollongong, to the Chair asking the committee to consider holding a public hearing in Wollongong as part of its inquiry into the integrity, efficacy and value for money of NSW Government grant programs
- 10 August 2020 – Email from Mr Sam Tedeschi, Director of Government Business in the Legislative Council, to the secretariat nominating the Hon Gareth Ward MP, Minister for Families, Communities and Disability Services, to assist the committee with its inquiry on financial hardship, homelessness and housing stress and advising of his availability

**Sent:**

- 23 July 2020 – Email from the secretariat to Mr Sam Tedeschi, Director of Government Business in the Legislative Council, inviting the Government to propose witnesses for the hearing on 17 August 2020

**4. Inquiry into the NSW Government's management of the COVID-19 pandemic****4.1 Publication of answers to questions on notice**

Resolved, on the motion of Mr Khan:

- That the committee authorise the publication of Minister Taylor's answers to questions on notice, received on 9 July 2020, with the exception of identifying information which is to remain confidential, as per the recommendation of the secretariat
- That the committee authorise the publication of Ms Webb's answers to questions on notice, received 16 July 2020, with the exception of identifying/sensitive information, as per the request of the author.

**4.2 Conduct of inquiry – Additional witnesses for hearing on 17 August 2020**

Committee noted that it previously agreed (via email) to a proposal from the Chair to add Homelessness NSW and the Asylum Seekers Centre to the witness list for the hearing on 17 August 2020.

**4.3 Allocation of question time**

Resolved, on the motion of Mrs Ward: That the allocation of questioning be left in the hands of the Chair for the hearing on 17 August 2020.

**4.4 Chairing duties to be shared**

Resolved, on the motion of Mr Khan: That the Hon Adam Searle MLC chair the hearing while the Chair (Mr Shoebridge) appears via teleconference for the hearing on 17 August 2020.

**4.5 Public hearing**

The committee proceeded to take evidence in public.

Witnesses were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witnesses were sworn:

- Dr Lucy Burgmann, Country Manager, Community Housing Ltd
- Ms Katherine McKernan, Chief Executive Officer, Homelessness NSW

- Mr Leo Patterson Ross, Chief Executive Officer, Tenants Union NSW
- Ms Joanna Quilty, Chief Executive Officer, NSW Council of Social Services

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn:

- Ms Rhiannon Cook, Manager, Policy and Advocacy, St Vincent de Paul Society
- Mr Tony Devlin, Manager, Money Care, Salvation Army
- Ms Nada Nasser, State Director (NSW, ACT, Victoria), Mission Australia

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn:

- Ms Rosanna Barbero, Chief Executive Officer, Addison Road Community Centre
- Mr Peter Hennessy, Company Secretary, St Francis Social Services
- Ms Miriam Pellicano, Executive Manager, House of Welcome, St Francis Social Services
- Ms Frances Rush, Chief Executive Officer, Asylum Seekers Centre

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 12:47 pm.

## 5. **Tendered documents**

Resolved, on the motion of Mr Khan: That the committee accept and publish the following document tendered during the public hearing:

- Document titled 'Addison Road Community Organisation – Report to NSW Parliamentary Inquiry into Covid-19 response', tendered by Ms Rosanna Barbero, Chief Executive Officer of the Addison Road Community Organisation

## 6. **Adjournment**

The committee adjourned at 12:56 pm. *Sine die.*

Anthony Hanna

**Committee Clerk**

## **Minutes no. 35**

Monday 21 September 2020

Public Accountability Committee

Macquarie Room, Parliament House at 9.19 am

## 1. **Members present**

Mr Shoebridge, *Chair*

Mr Graham

Mrs Houssos

Mr Khan

Mr Mason-Cox (via Webex)

Mrs Ward

## 2. **Apologies**

Mr Borsak

### 3. Correspondence

The committee noted the following items of correspondence:

#### *Received*

- 7 August 2020 – Email from Mr Brad McPherson, Manager Governance, Canterbury Bankstown Council, inquiring into how the Council can apply to appear as a witness for the inquiry into the integrity, efficacy and value for money of NSW Government grant programs.
- 14 August 2020 – Email from Mr Lewis Rangott, Executive Director Corruption Prevention, NSW Independent Commission Against Corruption, requesting a submission extension of a few days for the inquiry into the integrity, efficacy and value for money of NSW Government grant programs.
- 17 August 2020 – Email from Ms Helen Vallance, Director Strategy, Office of the Deputy Secretary, Community Engagement, Department of Premier and Cabinet, requesting a two week submission extension for the inquiry into the integrity, efficacy and value for money of NSW Government grant programs.
- 19 August 2020 – Email from Ms Leanne Perry, A/Director, Public Works Advisory and Regional Development, Department of Regional NSW, advising their submission to the inquiry into the integrity, efficacy and value for money of NSW Government grant programs will be a few days late.
- 27 August 2020 – Email from Mr Geoff Bell, Laing Entertainment, to secretariat, providing a revised copy of his submission to the inquiry into the integrity, efficacy and value for money of NSW Government grant programs.
- 8 September 2020 – Email from Ms Michelle Perry, Executive Assistant, Mosman Municipal Council, to secretariat, advising that Mosman Council will not be appearing at the hearing on 21 September for the inquiry into the integrity, efficacy and value for money of NSW Government grant programs.
- 14 September 2020 – Email from Mrs Carol Edds to secretariat, providing a revised copy of their submission to the inquiry into the integrity, efficacy and value for money of NSW Government grant programs.

#### *Sent*

- 13 July 2020 - Email from Chair to various stakeholders inviting them to provide a submission to the inquiry into the integrity, efficacy and value for money of NSW Government grant programs.

### 4. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs

#### 4.1 Public submissions

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submissions nos 1-21, 23-24, 26, 28-56, 58-71, 73-82, 84-87, 89-96.

A revised version of submission no. 85 has also been circulated and published.

#### 4.2 Partially confidential submissions

The following submissions were partially published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos 22, 25, 83, and 88.

A revised version of submission no. 27 has also been circulated and published.

Resolved, on the motion of Mr Khan: That the committee authorise the publication of submission nos 22, 25, 27, 83, and 88 with the exception of the author's name, which is to remain confidential, at the request of the author.

#### 4.3 Confidential submissions

Resolved, on the motion of Mr Khan: That the committee keep submission nos 57 and 72 confidential, as per the request of the author.

#### 4.4 Witnesses

The committee noted the Chair's draft lists of witnesses for the hearings on 21 September 2020 and 16 October 2020, as agreed via email:

**21 September 2020**

- Local Government NSW
- Panel of local councils:
  - Canterbury-Bankstown Council
  - Mosman Municipal Council
  - Cr Darcy Byrne, Mayor, Inner West Council
- Panel of local councils:
  - Hornsby Shire Council
  - Penrith City Council
  - Hills Shire Council
- Office of Local Government.

**16 October 2020**

- Independent Commission Against Corruption
- Auditor-General
- Department of Regional NSW
- Department of Premier and Cabinet.

**4.5 Future hearing dates**

Resolved, on the motion of Mr Graham: That the committee hold further hearings for the inquiry into the integrity, efficacy and value for money of NSW Government grants on Tuesday 3 November 2020 and Friday 27 November 2020.

**4.6 Election of Deputy Chair**

Resolved, on the motion of Mrs Ward: That the Hon Courtney Houssos MLC be elected Deputy Chair for the purposes of today's meeting.

**4.7 Allocation of questioning**

Resolved, on the motion of Mr Graham: That the allocation of questioning for the hearing be as follows:

- Alternate between opposition and crossbench with 15 minutes reserved at the end of each session for government questions.
- For the afternoon session with Mr Tim Hurst: alternate between opposition and crossbench with 15 minutes reserved for government questions at 3.00 pm and 4.45 pm.

**4.8 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witness was sworn and examined:

- Cr Linda Scott, President, Local Government NSW.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Cr Khal Asfour, Mayor, Canterbury-Bankstown Council
- Cr Darcy Byrne, Mayor, Inner West Council.

Cr Asfour tendered the following documents:

- Correspondence from Cr Asfour to the Hon Gabriel Upton MP, Minister for the Environment, Local Government and Heritage, regarding opportunities for further funding for Canterbury-Bankstown

Council, dated 8 June 2018 and correspondence from the Hon Scot MacDonald MLC, Parliamentary Secretary for Planning, in reply.

Cr Byrne tendered the following documents:

- Legal advice from Turner Freeman lawyers to Mr Tim Hurst, dated 13 July 2020.
- Correspondence from Cr Byrne to Mr Tim Hurst, Office of Local Government, regarding the Stronger Communities Fund, dated 24 August 2020.
- Correspondence from Mr Tim Hurst to Cr Byrne, regarding a matter referred to NCAT, dated 14 September 2020.

The committee proceeded to deliberate in private.

Witnesses, the media and the public withdrew.

#### **4.9 Deliberative**

Resolved, on the motion of Mr Graham: That the committee forward the transcript of this day's hearing to Mr Tim Hurst, Chief Executive Officer, Office of Local Government, to provide him with the opportunity to respond to any comments made by other witnesses about him.

#### **4.10 Public hearing**

Witnesses, the public and the media were re-admitted.

Cr Khal Asfour and Cr Darcy Byrne were examined.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Steven Head, General Manager, Hornsby Shire Council
- Mr Glen Magus, Director Corporate Support, Hornsby Shire Council
- Mr John Gordon, City Presentation Manager, Penrith City Council
- Mr Michael Edgar, General Manager, Hills Shire Council
- Mrs Chanda Saba, CFO, Hills Shire Council.

Mr Gordon tabled the following document:

- Document created by Penrith City Council entitled 'Penrith Sport and Recreation Strategy: Executive Summary'.

The evidence concluded and the witnesses withdrew.

Mr Khan left the meeting.

Witnesses, the media and the public withdrew.

#### **4.11 Deliberative**

Resolved, on the motion of Mrs Houssos: That Mr James Hebron, Deputy Secretary, Legal Services, Department of Planning, Industry and Environment, be permitted to attend the hearing with Mr Hurst as a legal advisor, but that Mr Hebron only attend in an advisory capacity.

#### **4.12 Public hearing**

Mr Khan joined the meeting.

Witnesses, the public and the media were admitted.

The following witness was sworn and examined:

- Mr Tim Hurst, Chief Executive Officer, Office of Local Government.

Mr Mason-Cox left the meeting.

Mr Shoebridge tabled the following documents returned to the Legislative Council, ordered under standing order 52 on 3 June 2020.

- Email from Laura Clarke to Tim Hurst, subject line 'Central Coast', dated 20 June 2018.
- Email from Sarah Lau to Tim Hurst, subject line 'Further approved funding for metro councils', dated 28 June 2018.
- Email from Sarah Lau to Tim Hurst, subject line 'FW: LG merger funds', dated 25 June 2018.
- Email from Sarah Lau to Laura Clarke and Tim Hurst, subject line 'RE: Central Coast', dated 20 June 2018.
- Email from Sarah Lau to Tim Hurst, subject line 'RE: Hornsby SCF payments', dated 27 June 2018.
- Email from Tim Hurst to Sarah Lau, subject line 'FW: Stronger Communities Funding', dated 6 November 2018.

The evidence concluded and the witness withdrew.

The public hearing concluded at 4.48 pm.

#### **4.13 Tendered documents**

Resolved, on the motion of Mrs Ward: That the committee authorise publication of the following documents:

- Correspondence from Cr Asfour to the Hon Gabriel Upton MP, Minister for the Environment, Local Government and Heritage, regarding opportunities for further funding for Canterbury-Bankstown Council, dated 8 June 2018 and correspondence from the Hon Scot MacDonald MLC, Parliamentary Secretary for Planning, in reply, tendered by Cr Khal Asfour, Mayor of Canterbury-Bankstown Council.
- Document created by Penrith City Council entitled 'Penrith Sport and Recreation Strategy: Executive Summary', tendered by Mr John Gordon, City Presentation Manager, Penrith City Council.
- Email from Laura Clarke to Tim Hurst, subject line 'Central Coast', dated 20 June 2018, tendered by Mr Shoebridge.
- Email from Sarah Lau to Tim Hurst, subject line 'Further approved funding for metro councils', dated 28 June 2018, tendered by Mr Shoebridge.
- Email from Sarah Lau to Tim Hurst, subject line 'FW: LG merger funds', dated 25 June 2018, tendered by Mr Shoebridge.
- Email from Sarah Lau to Laura Clarke and Tim Hurst, subject line 'RE: Central Coast', dated 20 June 2018, tendered by Mr Shoebridge.
- Email from Sarah Lau to Tim Hurst, subject line 'RE: Hornsby SCF payments', dated 27 June 2018, tendered by Mr Shoebridge.
- Email from Tim Hurst to Sarah Lau, subject line 'FW: Stronger Communities Funding', dated 6 November 2018, tendered by Mr Shoebridge.

#### **4.14 Further actions arising from the hearing**

Resolved, on the motion of Mrs Houssos:

- That the Chair write to Mr Hurst inviting him to clarify potential inconsistencies between his evidence given today, information contained in documents returned to the Legislative Council in response to an order for papers on 3 June 2020, as well as his evidence to Portfolio Committee 7 – Planning and Environment on 4 March 2020 for the inquiry into Budget Estimates 2019-2020 relating to the Stronger Communities Fund.
- That, on behalf of the committee, the Chair write to the Clerk of the Parliaments seeking advice on what evidence a witness may give regarding documents that are subject to Cabinet confidentiality.

## **5. Adjournment**

The committee adjourned at 5.10 pm, *sine die*.

Monica Loftus  
**Committee Clerk**

**Minutes no. 36**

Wednesday 7 October 2020

Public Accountability Committee

Macquarie Room, Sydney at 9:15 am

**1. Members**

Mr Shoebridge, *Chair* (from 9.18 am to 1.52 pm; from 2.11 pm to 4.42pm)

Ms Faehrmann (participating member from 12.30 pm)

Mr Graham

Mrs Houssos (substituting for Mr Searle from 12.30 pm)

Mr Khan (from 9.18 am to 10.38 am; from 10.57 am to 2.21 pm; from 4.02 pm to 4.42 pm)

Ms Sharpe (substituting for Mr Searle until 11.45 am)

Mrs Ward

**2. Apologies**

Mr Borsak, *Deputy Chair*

Mr Mason-Cox

Mr Searle

**3. Draft minutes**

Resolved, on the motion of Mr Khan: That draft minutes no. 34 be confirmed.

**4. Correspondence**

The committee noted the following correspondence:

***Received:***

- 15 September 2020 – Email from Ms Katherine McKernan, Chief Executive Officer, Homelessness NSW, to the secretariat, advising Homelessness NSW is unable to provide answers to its questions on notice and supplementary question
- 20 September 2020 – Email from Mr John Green, Deputy CEO, Australian Hotels Association, to the Hon Natalie Ward MLC, providing further information to the committee on the tourism voucher scheme
- 29 September 2020 – Letter from the Hon Victor Dominello MP, Minister for Customer Service, to the Chair responding to the committee's open invitation to the Government for urgent roundtable discussions with industry groups and venue operators across live music, arts and the night time economy

***Sent:***

- 23 September 2020 – Email from the secretariat to Mr Sam Tedeschi, Director of Government Business in the Legislative Council, inviting the Government to nominate witnesses to respond to evidence on the pandemic's impact on live music, arts and the night time economy on 7 October 2020
- 23 September 2020 – Letter from the Chair to the Hon Don Harwin MLC, the Hon Rob Stokes MP and the Hon Victor Dominello MP, extending an open invitation to the Government for urgent roundtable discussion with industry groups and venue operators across live music, arts and the night time economy

**5. Inquiry into the NSW Government's management of the COVID-19 pandemic****5.1 Government witnesses to appear on 7 October 2020**

Committee noted that it previously agreed (via email) to the Government's proposed witness list for the hearing on 7 October 2020.

**5.2 Answers to questions on notice and supplementary questions**

Committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Answers to questions on notice from Ms Miriam Pellicano and Mr Peter Hennessy of St Francis Social Services, received on 17 September
- Answers to questions on notice from Ms Rhiannon Cook of St Vince de Paul Society, received on 18 September
- Answers to questions on notice from Ms Rosanna Barbero of the Addison Road Community Centre, received on 15 September
- Answers to questions on notice from Mr Tony Devlin of the Salvation Army, received on 17 September
- Answers to questions on notice from Ms Nada Nasser of Mission Australia, received on 22 September
- Answers to questions on notice from Mr Leo Patterson Ross of the Tenants Union NSW, received on 21 September

### 5.3 Election of Deputy Chair

Resolved, on the motion of Ms Sharpe: That Mr Graham be elected Deputy Chair for the hearing on 7 October 2020.

### 5.4 Public hearing

The committee proceeded to take evidence in public.

Witnesses were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The Chair reminded Minister Ward that he has already sworn an oath to his office as a member of Parliament.

The Chair reminded the following witness that he has already been sworn for this inquiry:

- Mr Michael Coutts-Trotter, Secretary, Department of Communities and Justice

The following witnesses were sworn:

- Ms Simone Walker, Deputy Secretary, Strategy Policy and Commissioning, Department of Communities and Justice
- Ms Simone Czech, Deputy Secretary, Child Protection and Permanency, District and Youth Services, Department of Communities and Justice
- Mr Paul Vevers, Deputy Secretary, Housing, Disability and District Services, Department of Communities and Justice

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The Chair reminded Minister Dominello and Minister Harwin that they have already sworn an oath to their office as members of Parliament.

The Chair reminded the following witnesses that they have already been sworn for this inquiry:

- Ms Rose Webb, Deputy Secretary Better Regulation Division and Commissioner Fair Trading
- Ms Kate Foy, Deputy Secretary, Community Engagement, Department of Premier and Cabinet

The following witnesses were sworn:

- Mr Paul Sariban, Director - Liquor and Gaming Policy, Better Regulation Division
- Ms Kristen Daghish Rose, Director Stakeholder Engagement and Regulatory Education, Better Regulation Division
- Mr Luke Walton, Executive Director, Policy, Department of Planning, Industry and Environment

Minister Harwin tendered the following document:

- Media release from the National Association for the Visual Arts titled *NAVA apologises to Create NSW staff and reports on artists' and organisations' key concerns*

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The Chair reminded Minister Hazzard that he has already sworn an oath to his office as a member of Parliament.

The Chair reminded the following witnesses that they have already been sworn for this inquiry:

- Ms Elizabeth Koff, Secretary, NSW Health
- Dr Kerry Chant PSM, Chief Health Officer and Deputy Secretary, Population and Public Health, NSW Health.

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4:45 pm.

### 5.5 Tendered documents

Resolved, on the motion of Mrs Ward: That the committee accept and publish the following document tendered during the public hearing, with the exception of identifying information:

- Media release titled *NAVA apologises to Create NSW staff and reports on artists' and organisations' key concerns*, 18 September 2020, tabled by the Hon Don Harwin MLC.

Resolved, on the motion of Mrs Ward: That a link to the NSW Government's *Sydney 24 Hour Economy Strategy* be published on the committee's website.

## 6. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs

### 6.1 Focus of hearing on 16 October 2020

Resolved, on the motion of Mr Graham: That the hearing on Friday 16 October 2020 is to focus on local government grants programs such as the Stronger Communities Fund and Stronger Country Communities Fund, and that the Chair, through the secretariat, is to advise the Department of Premier and Cabinet and Regional NSW accordingly.

## 7. Adjournment

The committee adjourned at 4.42 pm, until 9:15 am Friday 16 October 2020 (public hearing).

Anthony Hanna  
Committee Clerk

### Minutes no. 37

Wednesday 14 October 2020  
Public Accountability Committee  
Room 1136, Parliament House at 9.09 am

### 1. Members present

Mr Shoebridge, *Chair*  
Mr Graham  
Mrs Houssos, via teleconference  
Mr Khan  
Mr Mason-Cox  
Mrs Ward

**2. Apologies**

Mr Borsak

**3. Correspondence**

The Committee noted the following items of correspondence:

***Received***

- 12 October 2020 – Emails from Deputy Secretary, Department of Premier and Cabinet, confirming the responsibilities for local government grant programs are with Regional NSW, not the Department of Premier and Cabinet.
- 13 October 2020 – Email from General Counsel, Department of Premier and Cabinet, confirming that all persons involved in the Stronger Communities Fund are no longer employed by the Department of Premier and Cabinet.

***Sent***

- 8 October 2020 – Email from secretariat to Kirstan Fulton, A/Executive Officer, Office of the Deputy Secretary, Department of Regional NSW, informing that the focus of the hearing on 16 October 2020 is on local government grant programs.
- 8 October 2020 – Email from secretariat to Ms Helen Vallance, Director Strategy, Office of the Deputy Secretary, Community Engagement, Department of Premier and Cabinet, informing that the focus of the hearing on 16 October 2020 is on local government grant programs.

**4. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs****4.1 Hearing on Friday 16 October**

Mr Graham moved:

- a. That, given the correspondence from General Counsel, Department of Premier and Cabinet received on 13 October 2020, the committee invite the following former and/or current staffers in the Premier's office to appear as witnesses at a hearing on Friday 23 October from 10.00 am to 12.00 pm:
  - Ms Sarah Cruickshank, former Chief of Staff
  - Ms Sarah Lau.
- b. That the chair write to the Department of Premier and Cabinet to inform them of the committee's resolution.

Mrs Ward moved: That the motion of Mr Graham be amended by omitting all words and inserting instead: That the committee reinvite the Department of Premier and Cabinet to appear at the hearing on 16 October 2020 and consider calling ministerial staffers to appear at a hearing on 23 October 2020, pending their response.

Amendment of Mrs Ward put.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Noes: Mr Graham, Mrs Houssos, Mr Shoebridge.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Original question of Mr Graham put.

Ayes: Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Khan, Mr Mason-Cox, Mrs Ward.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

## 4.2 November hearings

### *Arts hearing*

Resolved, on the motion of Mr Graham:

- That the committee vacate the hearing date of Tuesday 3 November and hold a hearing into arts grants on Wednesday 9 December 2020
- That members nominate additional witnesses for this hearing by Friday 23 October 2020.

### *Regional councils hearing*

Resolved, on the motion of Mr Graham: That the following witnesses be added to the chair's draft witness list for the hearing on 27 November 2020:

- Mr Paul Scully MP, Member for Wollongong and Mr Tim Crakanthorp MP, Member for Newcastle as an additional panel for 30 mins
- Queanbeyan-Palerang Regional Council as part of panel 3.

## 5. Adjournment

The committee adjourned at 9.35 am until 8.45 am Friday 16 October 2020 (public hearing for the inquiry into the integrity, efficacy and value for money of NSW Government grant programs).

Monica Loftus  
Committee Clerk

## Minutes no. 38

Friday 16 October 2020

Public Accountability Committee

Jubilee Room, Parliament House at 8.45 am

### 1. Members present

Mr Shoebridge, *Chair* (via WebEx)

Mr Amato (via WebEx substituting for Mrs Ward from 1.30 pm to 2.30 pm)

Mr Graham

Mrs Houssos (via phone until 8.55 am, in-person from 9.23 am)

Mr Khan (from 8.49 am)

Mr Mason-Cox (from 1.30 pm)

Mrs Ward (via WebEx until 8.58 am, in-person from 8.58 am to 1.30 pm and from 2.30 pm)

### 2. Apologies

Mr Borsak

### 3. Correspondence

The committee noted the following items of correspondence:

#### *Received*

- 18 September 2020 – Email from Garnet Brownbill, submission author, providing a dropbox link to supporting information to his submission.
- 28 September 2020 – Email from Vanessa Gill, Executive Officer, Office of the Auditor-General, to secretariat, requesting that witnesses from the Audit Office appear in the afternoon at the hearing on 16 October 2020.
- 29 September 2020 – Email from Lewis Rangott, Executive Director, Corruption Prevention, NSW ICAC, requesting that witnesses from ICAC appear at midday at the hearing on 16 October 2020.

- 1 October 2020 – Email from Kirstan Fulton, A/Executive Officer, Office of the Deputy Secretary, Department of Regional NSW, requesting that certain officials attend in the public gallery and as a legal advisor at the table at the hearing on 16 October 2020.
- 9 October 2020 - Email from Mr Bill Hawker, Mayoral Media Officer, Inner West Council, providing a cover letter for the document tendered by Cr Darcy Byrne at the hearing on 21 September 2020.
- 12 October 2020 – Email from Ms Kirstan Fulton, A/Executive Officer, Office of the Deputy Secretary, Department of Regional NSW, advising Mr Hanger is the most appropriate person to answer relevant questions and that Mr Jonathan Wheaton will also attend as a witness on 16 October 2020.
- 15 October 2020 – Email from Kaelee Aboud, Office of the Government Whip, advising that the Hon Lou Amato MLC will substitute for the Hon Natalie Ward MLC for the afternoon session of the hearing on 23 October 2020.

**Sent**

- 30 September 2020 – Letter from chair to Mr Tim Hurst, Deputy Secretary, Office of Local Government, providing a copy of the transcript from the hearing on 21 September 2020 and inviting Mr Hurst to respond to comments made about him.
- 7 October 2020 – Letter from chair to Mr Tim Hurst, Deputy Secretary, Office of Local Government, inviting him to reconsider evidence given to Portfolio Committee 7 – Planning and Environment at Budget Estimates 2019-2020.
- 9 October 2020 – Email from secretariat to Cr Darcy Byrne, Mayor, Inner West Council, regarding a document tendered by him at the hearing on 21 September 2020.
- 14 October 2020 – Letter from chair to Ms Kate Boyd, General Counsel, Department of Premier and Cabinet, in response to her correspondence on 13 October 2020 regarding the non-attendance of the Department of Premier and Cabinet at the hearing on 16 October 2020.

**4. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs****4.1 Election of Deputy Chair**

Resolved, on the motion of Mrs Houssos: That Mr Graham be elected Deputy Chair for the purpose of today's meeting.

**4.2 Acting Chair for the hearing**

Resolved, on the motion of Mrs Houssos: That Mr Graham act as Chair for the purpose of today's hearing only.

Mr Khan joined the meeting.

**4.3 Allocation of questioning**

The committee noted that the allocation of questioning for today's hearing be left in the hands of the Acting Chair.

**4.4 Answers to questions on notice**

Resolved, on the motion of Mr Graham: That the committee publish the answers to questions on notice received from Cr Linda Scott, President, Local Government NSW, received 13 October 2020.

**4.5 Public hearing**

Witnesses, the public and the media were admitted.

The Acting Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witness was sworn and examined:

- The Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Chris Hanger, Deputy Secretary, Public Works Advisory and Regional Development, Department of Regional NSW
- Mr Jonathan Wheaton, Executive Director, Regional Programs, Department of Regional NSW.

The evidence concluded and the witness withdrew.

The committee proceeded to deliberate in private.

Witnesses, the media and the public withdrew.

#### **4.6 Previous minutes**

Resolved, on the motion of Mrs Houssos: That draft minutes nos 35 and 37 be confirmed.

#### **4.7 Submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submissions nos 97-99.

#### **4.8 Resolution from hearing on 21 September 2020**

Resolved, on the motion of Mrs Ward: That the committee defer consideration of its resolution from 21 September 2020 relating to seeking advice from the Clerk of the Parliaments on Cabinet documents.

#### **4.9 Tendered documents from hearing on 21 September 2020**

The committee noted that it would defer consideration of whether to accept and publish documents tendered by Cr Darcy Byrne at the hearing on 21 September 2020, pending a response from Mr Tim Hurst.

#### **4.10 Future hearing dates**

The committee noted it has previously resolved to hold hearings on the following dates:

- Friday 23 October 2020 to hear from current and former staffers from the Premier's Office
- Friday 27 November 2020 to hear from regional councils
- Wednesday 9 December 2020 to hear about arts grants.

Resolved, on the motion of Mrs Houssos: That the committee hold a further hearing in early February 2021 and that the secretariat canvass member availability for a suitable date.

#### **4.11 Public hearing**

Mrs Ward left the meeting.

Mr Amato and Mr Mason-Cox joined the meeting.

Witnesses, the public and the media were re-admitted.

The following witnesses were sworn and examined:

- Ms Margaret Crawford, Auditor-General of New South Wales, Audit Office of New South Wales
- Mr Scott Stanton, Acting Deputy Auditor-General of New South Wales, Audit Office of New South Wales
- Ms Claudia Migotto, Assistant Auditor-General, Performance Audit, Audit Office of New South Wales.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.30 pm.

Witnesses, the media and the public withdrew.

Mr Amato left the meeting.

Mrs Ward joined the meeting.

#### **4.12 ICAC Evidence**

Resolved, on the motion of Mr Khan:

- a. That the committee not publish the ICAC session of the transcript from today until further consideration by the committee.

- b. That the committee meet as soon as practicable once the transcript has been made available to consider its publication.

#### **4.13 Correspondence**

The committee noted the following items of correspondence:

##### ***Received***

- 15 October 2020 – Email from Kate Boyd, General Counsel, Premier and Cabinet, to the secretariat, indicating that Ms Sarah Cruickshank will not appear as a witness at the hearing on Friday 23 October 2020.
- 16 October 2020 – Email from Email from Kate Boyd, General Counsel, Premier and Cabinet, to the secretariat, indicating that Ms Sarah Lau will not appear as a witness at the hearing on Friday 23 October 2020.

#### **4.14 Witnesses for hearing - 23 October 2020**

Mr Graham moved: That, given the correspondence from Kate Boyd received on 15 and 16 October 2020:

- a. Ms Sarah Lau and Ms Sarah Cruickshank be re-invited to appear as witnesses at the hearing on Friday 23 October 2020.
- b. If Ms Sarah Lau and Ms Sarah Cruickshank again decline to appear or do not respond by 5.00 pm Tuesday 20 October, the committee issue summons to Ms Sarah Lau, Senior Policy Advisor, Office of the Premier and Ms Sarah Cruickshank, Deputy Secretary, Transformation Group, Department of Premier and Cabinet, to give evidence at the hearing on Friday 23 October 2020 at 10.00 am.

Question put.

The committee divided.

Ayes: Mr Graham, Mrs Houssos, Mr Shoebridge

Noes: Mr Khan, Mr Mason-Cox, Mrs Ward.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

### **5. Adjournment**

The committee adjourned at 3.00 pm until 9.45 am, Friday 23 October 2020 (hearing for the integrity, efficacy and value for money of NSW Government grant programs inquiry).

Monica Loftus

**Committee Clerk**

#### **Minutes no. 39**

Friday 23 October 2020

Public Accountability Committee

Jubilee Room, Parliament House at 9.30 am

#### **1. Members present**

Mr Shoebridge, *Chair*

Mr Graham

Mrs Houssos

Mr Khan

Mr Mason-Cox

Mrs Ward

#### **2. Apologies**

Mr Borsak

### 3. Draft minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 38 be confirmed.

### 4. Correspondence

The committee noted the following items of correspondence:

#### *Received*

- 15 October 2020 – Letter from Ms Penelope Benton, Acting Chief Executive Officer, National Association for the Visual Arts, to the committee, requesting clarification of evidence from the hearing on 18 September for the inquiry into the NSW Government's management of the COVID-19 pandemic.
- 19 October 2020 – Email from Department of Premier and Cabinet, to secretariat, requesting reasons for the committee's invitations to Ms Sarah Lau and Ms Sarah Cruickshank to appear on 23 October 2020 for the inquiry into NSW government grant programs.
- 20 October 2020 – Email from Department of Premier and Cabinet, to secretariat, indicating that Ms Sarah Cruickshank will attend the hearing on 23 October 2020 for the inquiry into NSW government grant programs and Ms Sarah Lau will provide a response by the end of the day.
- 20 October 2020 - Email from Department of Premier and Cabinet, to secretariat, indicating that Ms Sarah Lau will attend the hearing on 23 October 2020 for the inquiry into NSW government grant programs.
- 21 October 2020 – Email from Department of Premier and Cabinet, to secretariat, confirming that Ms Sarah Lau will attend the hearing on 23 October 2020 and that the Department of Premier and Cabinet will not be nominating an alternative witness.

#### *Sent*

- 16 October 2020 – Letter from the chair to Ms Sarah Lau, Senior Policy Advisor, Office of the Premier, re-inviting her to appear at the hearing on 23 October 2020 and noting the committee will summon her if she declines for the inquiry into NSW government grant programs.
- 16 October 2020 – Letter from the chair to Ms Sarah Cruickshank, Deputy Secretary, Transformation Group, Department of Premier and Cabinet, re-inviting her to appear at the hearing on 23 October 2020 and noting the committee will summon her if she declines for the inquiry into NSW government grant programs.
- 20 October 2020 – Email from the secretariat to Department of Premier and Cabinet, providing reasons for the committee's request that Sarah Lau and Sarah Cruickshank appear as witnesses at the hearing on 23 October 2020 for the inquiry into NSW government grant programs.
- 21 October 2020 – Email from the secretariat to Department of Premier and Cabinet, in response to Ms Kate Boyd's advice that the Department of Premier and Cabinet will not be nominating an alternative witness.

Resolved, on the motion of Mr Graham: That the committee authorise the publication of the correspondence received from and sent to Ms Kate Boyd on 21 October 2020 (noted above).

### 5. Inquiry into the NSW Government's management of the COVID-19 pandemic

#### 5.1 Clarification of evidence

Resolved, on the motion of Mr Khan: That the committee authorise:

- the publication of correspondence from Ms Penelope Benton, dated 15 October 2020, clarifying evidence she provided at the hearing on 18 September 2020
- the addition of footnotes to the relevant sections of Ms Benton's evidence of 18 September 2020, reflecting her clarification of evidence.

### 6. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs

#### 6.1 Election of Deputy Chair

Resolved, on the motion of Mrs Ward: That Mrs Houssos be elected Deputy Chair for the purpose of today's meeting.

### **6.2 Allocation of questioning**

Resolved, on the motion of Mr Graham: That the sequence of questions to be asked at the hearing is to alternate between the opposition and crossbench, with 15 minutes reserved at the end for government questions.

### **6.3 Publication of hearing footage**

The committee noted it had previously resolved by email to authorise the secretariat to publish the video footage of the hearing on 16 October 2020 on the committee's website.

### **6.4 Transcript from 16 October 2020**

Mr Graham moved: That the committee authorise the immediate publication of the ICAC evidence from the hearing on 16 October 2020, noting that it may further consider this position pending future advice from the ICAC provided in answers to questions on notice.

Mrs Ward moved: That the motion of Mr Graham be amended by removing all words after '16 October 2020'.

Amendment of Mrs Ward put.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Noes: Mr Graham, Mrs Houssos, Mr Shoebridge.

There being an equality of vote, question resolved in the negative on the casting vote of the Chair.

Original question of Mr Graham put and passed.

### **6.5 Answers to questions on notice**

Resolved, on the motion of Mr Mason-Cox: That the committee authorise the publication of the following answers to questions on notice:

- Mr Steven Head, General Manager, Hornsby Shire Council, received on 21 October 2020, including appendixes
- Cr Darcy Byrne, Mayor, Inner West Council, received on 22 October 2020, included appendixes
- Mr Michael Edgar, General Manager and Ms Chandi Saba, Chief Financial Officer, The Hills Shire Council, received on 22 October 2020
- Mr Tim Hurst, Chief Executive Officer, Office of Local Government, received on 22 October 2020.

### **6.6 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witnesses were sworn and examined:

- Ms Sarah Lau, Senior Policy Advisor, Office of the NSW Premier
- Ms Sarah Cruickshank, Former Chief of Staff, Office of the NSW Premier.

Ms Lau tendered the following document:

- Letter from Mr Tim Hurst, Office of Local Government to the Clerk of the Parliaments, regarding the Stronger Communities Fund tied grants round, signed 19 October

Mr Shoebridge tendered the following document:

- Various emails returned to the Legislative Council, ordered under standing order 52 on 3 June 2020 relating to the Stronger Communities Fund.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 11.48 am.

Witnesses, the media and the public withdrew.

### 6.7 Tendered documents

Resolved, on the motion of Mrs Houssos: That the committee accept and publish the following tendered documents:

- Letter from Mr Tim Hurst, Office of Local Government to the Clerk of the Parliaments, regarding the Stronger Communities Fund tied grants round, signed 19 October 2020, tendered by Ms Sarah Lau, Senior Policy Advisor, Office of the NSW Premier.
- Various emails returned to the Legislative Council, ordered under standing order 52 on 3 June 2020 relating to the Stronger Communities Fund, tendered by Mr Shoebridge.

### 6.8 Witnesses for future hearings

The committee noted the witness list for the hearing on 27 November 2020:

- Panel (50 mins)
  - City of Newcastle
  - Lake Macquarie City Council
  - Wollongong City Council
- Panel (30 mins)
  - Mr Paul Scully MP, Member for Wollongong
  - Mr Tim Crakanthorp MP, Member for Newcastle
- Panel (50 mins)
  - Lismore City Council
  - Tweed Shire Council
  - Bega Valley Shire Council
- Panel (50 mins)
  - Federation Council
  - Brewarrina Shire Council
  - Tenterfield Shire Council
  - Queanbeyan-Palerang Regional Council
- Panel (50 mins)
  - Central NSW Joint Organisation
  - Canberra Region Joint Organisation
  - Hunter Joint Organisation.

The committee noted that the chair had previously circulated the proposed witnesses to appear at the hearing on 9 December 2020 (the arts):

- Theatre Network, MusicNSW, Ausdance NSW & Regional Arts NSW
- Live Music Office
- National Association for the Visual Arts
- Writing NSW
- Darren Heinrich
- Alex Masso
- Sydney Improvised Music Association
- Create NSW.

Resolved, on the motion of Mrs Houssos: That members nominate additional or alternative witnesses and suggest allocation of times for the arts hearing by 10.00 am Monday 26 October 2020.

## 7. Adjournment

The committee adjourned at 12.05 pm until 1.00 pm, Friday 23 October 2020 (hearing for the Budget Process inquiry).

Monica Loftus

**Committee Clerk**

### Minutes no. 40

Friday 23 October 2020

Public Accountability Committee

Jubilee Room, Parliament House, Sydney at 1.02 pm

#### 1. Members present

Mr Shoebridge, *Chair*

Mr Graham

Mr Khan

Mr Mason-Cox

Mrs Ward (*from 1.08 pm*)

#### 2. Apologies

Mr Borsak

Mr Primrose

#### 3. Inquiry into the Budget process for independent oversight bodies and the Parliament of New South Wales

##### 3.1 Public hearing

Witnesses were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witnesses were sworn and examined:

- Ms Margaret Crawford, Auditor-General for NSW
- Mr Ian Goodwin, Deputy Auditor-General for NSW

Mrs Ward departed at 2.15 pm.

The evidence concluded and the witness withdrew.

The public hearing concluded at 2.29 pm.

##### 3.2 Correspondence

The committee noted the following items of correspondence:

###### **Received:**

- 28 September 2020 – Letter from Mr Mark Webb, Chief Executive and Mr David Blunt, Clerk of the Parliaments, Parliament of New South Wales, requesting clarification on Parliament's second submission to the inquiry (budget process inquiry)
- 7 October 2020 – Email from Ms Lauren Berrell, Associate to the Chief Commissioner, Law Enforcement Conduct Commission (LECC), to the secretariat, requesting that the LECC submission not be published until after publication of the Auditor-General's report (budget process inquiry).

###### **Sent:**

- 24 September 2020 – Letter from the Chair, to Ms Margaret Crawford, Auditor-General for NSW, inviting her to attend a hearing on 23 October 2020 and to make a submission to the inquiry (budget process inquiry)
- 6 October 2020 – Letter from the Chair, to Mr Mark Webb, Chief Executive and Mr David Blunt, Clerk of the Parliaments, Parliament of New South Wales, responding to their request for clarification about a second submission to the inquiry (budget process inquiry).

### 3.3 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 10a , 55a and 57.

### 3.4 Future conduct of the inquiry

Resolved, on the motion of Mr Khan that members advise the secretariat by COB Wednesday 28 October 2020 if they wish to hold another hearing.

## 4. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs

### 4.1 Future conduct of the inquiry

Mr Graham moved: That:

- a. That the committee repurpose the hearing date of 9 December 2020 from a focus on arts programs to the Stronger Communities Fund
- b. The following witnesses be invited to appear at the hearing on 9 December 2020:
  - Mr Matthew Crocker, Former Advisor in the Office of the Premier.
  - Appropriate representative/s from the Deputy Premier's Office
  - Appropriate representative/s from the former Minister for Local Government (Minister Upton's) Office, including Mr Kevin Wilde.
  - Mr Tim Hurst, Office of Local Government.
- c. Members have until 5.00 pm Wednesday 28 October 2020 to provide comment on the above proposed witnesses and to nominate appropriate representatives from the Offices of the Deputy Premier, the Hon John Barilaro and the former Minister for Local Government, the Hon Gabrielle Upton.

Question put.

The committee divided.

Ayes: Mr Graham, Mr Shoebridge.

Noes: Mr Khan, Mr Mason-Cox.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

## 5. Adjournment

The committee adjourned at 2.38 pm, *sine die*.

Madeleine Dowd  
Committee Clerk

### Minutes no. 41

Monday 9 November 2020  
Public Accountability Committee  
Room 1136, Parliament House, 12.31 pm

**1. Members present**

Mr Shoebridge, *Chair* (until 12.45 pm)

Mr Borsak, *Deputy Chair*

Mr Graham

Mrs Houssos

Mr Khan

Mr Mason-Cox (*via Webex*)

Mrs Ward (until 1.05 pm)

**2. Previous minutes**

Resolved, on the motion of Mrs Houssos: That draft minutes nos 39 and 40 be confirmed.

**3. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs****3.1 Declaration of conflict of interest**

Mr Shoebridge made a declaration of a potential pecuniary conflict of interest.

**3.2 Election of Acting Deputy Chair for duration of inquiry**

Resolved, on the motion of Mr Graham: That Mrs Houssos be elected Deputy Chair for any part of a meeting in which the Chair and Deputy Chair are not present for the purposes of the inquiry into the integrity, efficacy and value for money of NSW Government grant programs.

**3.3 Witnesses – Hearing 9 December 2020**

The committee noted it had resolved at the last meeting and confirmed over email (noting the objection of government members) that the following witnesses be invited to appear at the hearing on 9 December 2020:

- Mr Matthew Crocker, Former Director, Office of the NSW Premier, The Hon Gladys Berejiklian MP
- Ms Laura Clarke, Former Deputy Chief of Staff, Director of Policy, Office of the Deputy Premier, the Hon John Barilaro MP, and any additional nominated representatives
- Mr Kevin Wilde, Former Chief of Staff, Office of the Former Minister for Local Government, Ms Gabrielle Upton MP, and any additional nominated representatives
- Mr Tony Harris, Former NSW Auditor-General
- State Records Office.

The committee noted the secretariat had been unable to contact Mr Kevin Wilde.

The committee noted the following items of correspondence:

***Received:***

- 6 November 2020 – Letter from Mr Adam Lindsay, Executive Director, State Archives and Records Authority of NSW, to the chair, declining the committee's invitation to appear at the hearing on 9 December for the integrity of government grants inquiry and suggesting other ways they could assist the inquiry.
- 9 November 2020 – Email from Ms Laura Clarke, Former Chief of Staff, Office of the Deputy Premier, to the secretariat, declining the committee's invitation to appear at the hearing on 9 December for the integrity of government grants inquiry.

Mrs Houssos moved:

**1. That:**

- a. The committee re-invite Ms Laura Clarke, Former Chief of Staff, Office of the Deputy Premier to appear as a witness at the hearing on Wednesday 9 December 2020.
- b. If Ms Clarke again declines to appear or does not respond within 7 days, the committee issue summons to Ms Laura Clarke, former Chief of Staff, Office of the Premier, to give evidence at the hearing on Wednesday 9 December 2020 at 11.15 am on Wednesday 9 December 2020.

**2. That:**

- a. If Mr Matthew Crocker, Former Director, Office of the NSW Premier declines to appear as a witness at the hearing on 9 December 2020 or does not respond to the committee's invitation within 7 days,

the committee re-invite Mr Matthew Crocker to appear.

- b. If Mr Crocker again declines to appear or does not respond within 7 days of the committee's re-invitation, the committee issue summons to Mr Matthew Crocker, Former Director, Office of the NSW Premier, to give evidence at the hearing at 10.00 am on Wednesday 9 December 2020.
3. That:
- a. If Mr Kevin Wilde, Former Chief of Staff, Office of the Former Minister for Local Government, declines to appear as a witness at the hearing on 9 December 2020 or does not respond to the committee's invitation within 7 days of the committee's invitation, the committee re-invite Mr Kevin Wilde to appear.
  - b. If Mr Wilde again declines to appear or does not respond within 7 days of the committee's re-invitation, the committee issue summons to Mr Kevin Wilde, Former Chief of Staff, Office of the Former Minister for Local Government, to give evidence at the hearing at 1.30 pm on Wednesday 9 December 2020.

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Question resolved in the affirmative.

Resolved, on the motion of Mrs Houssos: That:

1. The State Archives and Records Authority be removed from the witness list for the hearing on 9 December 2020
2. The chair, on behalf of the committee, write to the State Archives and Records Authority seeking answers to written questions and any other information they wish to provide to the committee by Friday 4 December 2020
3. Members have until 9.00 am Thursday 12 November to submit proposed questions to the secretariat, to be circulated to the rest of the committee for comment.

Mr Shoebridge left the meeting.

### 3.4 Publication of correspondence

The committee noted the following items of correspondence were published by the committee clerk with names and identifying information removed, as agreed to by the committee over email, noting the objection of government members:

***Received:***

- 16 October 2020 – Email from Department of Premier and Cabinet, to secretariat, indicating that Ms Sarah Lau will not appear as a witness at the hearing on Friday 23 October 2020.
- 19 October 2020 – Email from Department of Premier and Cabinet, to secretariat, requesting reasons for the committee's invitations to Ms Sarah Lau and Ms Sarah Cruickshank to appear on 23 October 2020 for the inquiry into NSW government grant programs.
- 21 October 2020 - Email from Department of Premier and Cabinet, to secretariat, indicating that Ms Sarah Lau will attend the hearing on 23 October 2020 for the inquiry into NSW government grant programs.

The committee further noted the following items of correspondence were published by the committee clerk with names and identifying information removed, as agreed to by the committee over email:

***Received:***

- 2 November 2020 – Letter from Mr Tim Reardon, Secretary, Department of Premier and Cabinet, to chair, regarding witnesses at the hearing on 23 October 2020.

**Sent:**

- 20 October 2020 – Email from the secretariat to Department of Premier and Cabinet, providing reasons for the committee's request that Sarah Lau and Sarah Cruickshank appear as witnesses at the hearing on 23 October 2020 for the inquiry into NSW government grant programs.

**3.5 Correspondence to the Department of Premier and Cabinet**

Mr Graham moved: That the Deputy Chair write to Mr Tim Reardon, Secretary, Department of Premier and Cabinet, in response to his letter of 2 November 2020, with further questions relating to the involvement of the Department in Ms Lau's attendance at the hearing on 23 October 2020, including:

- Whether the Department of Premier and Cabinet was conveying the view of Ms Lau when they stated 'I am therefore advised that Ms Lau is unlikely to be able to assist the Committee's inquiries further by attending in person' or whether this information was provided with some knowledge of the evidence Ms Lau might provide or was provided by others.
- Whether the Department of Premier and Cabinet was aware of the working advice notes when informing the committee that 'all records concerning Ms Lau's role in relation to communicating grant funding decisions to the Office of Local Government appear to have been produced ...'.
- When the Department of Premier and Cabinet became aware that the working advice notes had been shredded.

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos.

Noes: Mr Khan, Mr Mason-Cox, Mrs Ward.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Acting Chair (Mr Borsak).

**3.6 Questions relating to attendance of witnesses on 23 October**

Resolved, on the motion of Mr Graham: That the committee does not intend to ask questions at the hearings on 27 November 2020 and 9 December 2020 relating to the correspondence between the Department of Premier and Cabinet and the committee regarding the witnesses for the hearing on 23 October 2020.

Mrs Ward left the meeting.

**3.7 Correspondence to State Records Authority regarding destruction of documents**

Resolved on the motion of Mr Graham:

1. That the chair write to the State Archives and Records Authority on behalf of the committee to ask:
  - What sort of record is considered a 'state record' under the *State Records Act 1998*, and more specifically are working advice notes state records and are they required to be retained?
  - What are the consequences or penalties for a breach of the *State Records Act 1998* by disposing of a state record?
2. That the State Archives and Records Authority be asked to respond by 12.00 pm Monday 16 November 2020.

**3.8 Correspondence to the Department of Premier and Cabinet relating to retrieval of electronic records**

Mr Graham moved: That the chair write to Mr Tim Reardon, Secretary, Department of Premier and Cabinet, seeking assistance to retrieve electronic copies of the working advice notes referred to by Ms Sarah Lau, Senior Policy Advisor, Office of the Premier, in her evidence to the committee on 23 October 2020 and that the committee request the Department:

- a. retrieve and reconstitute these records from backups,
- b. provide them to committee,
- c. provide advice about how quickly this can be done, and
- d. respond by 12.00 pm Monday 16 November 2020.

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos.

Noes: Mr Khan, Mr Mason-Cox.

Question resolved in the affirmative.

### 3.9 Invitation to Premier to attend as a witness

Mr Graham moved: That the Hon Gladys Berejiklian MP, Premier, be invited to appear as a witness at a future hearing on a date to be agreed to by the Premier and the committee.

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos.

Noes: Mr Khan, Mr Mason-Cox.

Question resolved in the affirmative.

## 4. Adjournment

The committee adjourned at 1.15 pm, *sine die*.

Monica Loftus

**Committee Clerk**

## Minutes no. 42

Friday 27 November 2020

Public Accountability Committee

Macquarie Room, Parliament House, 9.31 am

### 1. Members present

Mr Shoebridge, *Chair* (until 3.10 pm)

Mrs Houssos, *Acting Deputy Chair* (via Webex)

Mr Graham

Mr Khan (from 10.48 am)

Mr Mallard (substituting for Mrs Ward until 10.51 am)

Mrs Ward (via Webex, from 10.51 am)

### 2. Apologies

Mr Borsak

Mr Mason-Cox

### 3. Previous minutes

Resolved, on the motion of Mrs Houssos: That draft minutes no. 41 be confirmed.

### 4. Correspondence

The committee noted the following items of correspondence:

#### *Inquiry into the NSW Government's management of the COVID-19 pandemic*

##### *Received:*

- 6 November 2020 – Letter from the Hon Brad Hazzard MP, Minister for Health and Medical Research, to the Chair enclosing the Minister's post-hearing responses from the COVID-19 pandemic hearing on 7 October 2020.
- 9 November 2020 – Letter from the Hon Gareth Ward MP, Minister for Families, Communities and Disability Services, to the Chair enclosing the Minister's post-hearing responses from the COVID-19 pandemic hearing on 7 October 2020.

- 9 November 2020 - Letter from the Hon Don Harwin MLC, Minister for the Public Service, Employee Relations, Aboriginal Affairs and the Arts, to the Chair enclosing the Minister's post-hearing responses from the COVID-19 pandemic hearing on 7 October 2020.

***Inquiry into the integrity, efficacy and value for money of NSW Government grant programs***

***Received:***

- 27 October 2020 – Letter from Mr Terry Dodds, Chief Executive, Tenterfield Shire Council, to secretariat, declining the committee's invitation to appear at the hearing on 27 November for the integrity of government grants inquiry.
- 30 October 2020 – Email from Todd Hopwood, Manager Governance and Customer Service, Wollongong City Council, to secretariat, declining the committee's invitation to appear at the hearing on 27 November for the integrity of government grants inquiry.
- 30 October 2020 – Letter from Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, to the Chair, regarding evidence provided relating to the Stronger Communities Fund.
- 2 November 2020 – Email from Dan Hughes, Government Relations and Policy Advisor, Lake Macquarie City Council, to secretariat, declining the committee's invitation to appear at the hearing on 27 November for the integrity of government grants inquiry.
- 9 November 2020 – Email from Mr Matthew Crocker, Former Policy Advisor, Office of the Premier, to the secretariat, requesting the committee provide reasons for their invitation that he appear as a witness at the hearing on 9 December 2020.
- 10 November 2020 – Letter from Mr Tim Reardon, Secretary, Department of Premier and Cabinet, in response to the committee's request for deleted electronic records to be retrieved.
- 12 November 2020 – Letter from Mr Tim Hurst, Office of Local Government, to chair, regarding publication of documents tabled by Cr Darcy Byrne on 21 September 2020.
- 13 November 2020 – Letter from Mr Adam Lindsay, Executive Director, State Archives and Records Authority to the chair, in response to questions put to them regarding what constitutes a state records and what penalties exist for destruction of state records under the *State Records Act 1998* on 9 November 2020.
- 15 November 2020 – Email from Mr Kevin Wilde, Former Chief of Staff, Office of the Former Minister for Local Government, to the secretariat, advising he will attend the hearing on 9 December 2020 as a witness and requesting further information about his attendance.
- 16 November 2020 – Email from Mr Matthew Crocker, Former Policy Advisor, Office of the Premier, to the secretariat, advising he will attend the hearing on 9 December 2020 as a witness.
- 18 November 2020 – Email from Ms Laura Clarke, Former Deputy Chief of Staff, Office of the Deputy Premier, to the secretariat, advising she will attend the hearing on 9 December 2020 as a witness.
- 18 November 2020 – Email from Senada Bjelic, office of the Hon Robert Borsak MLC, advising Mr Borsak will be an apology for the hearings on 27 November and 9 December.
- 20 November 2020 – Letter from Mr Tim Reardon, Secretary, Department of Premier and Cabinet, to the Deputy Chair, in response to his letter of 10 November regarding the involvement of the Department of Premier and Cabinet in the attendance of witnesses at the hearing on 23 October.
- 20 November 2020 - Letter from Bran Black, Director Cabinet and Legal, Office of the Premier, to the Chair, declining the committee's invitation to appear at a future hearing.
- 24 November 2020 – Email from Kevin Wilde, Former Chief of Staff, Office of the Former Minister for Local Government, to the secretariat, requesting that he appear via Webex on 9 December 2020.
- 27 November 2020 – Email from Kaelee Aboud, Office of the Government Whip, advising that the Hon Shayne Mallard MLC will substitute for the Hon Natalie Ward MLC on 27 November 2020 until 11.00 am.

**Sent:**

- 9 November 2020 – Letter from the Chair to Mr Adam Lindsay, Executive Director, State Archives and Records Authority, requesting information on what constitutes a state records and what penalties exist for destruction of state records under the *State Records Act 1998*.
- 9 November 2020 – Letter from the Chair to Mr Tim Reardon, Secretary, Department of Premier and Cabinet, regarding retrieval of deleted working advice notes electronic copies.
- 10 November 2020 – Letter from the Deputy Chair to Mr Tim Reardon, Secretary, Department of Premier and Cabinet, in response to his letter of 2 November 2020 and seeking clarification on the advice from the Department of Premier and Cabinet relating to witness attendance at the hearing on 23 October 2020.
- 10 November 2020 – Email from the secretariat to Mr Matthew Crocker, Former Director, Office of the Premier, providing reasons for the committee's invitation for him to appear at the hearing on 9 December 2020.
- 11 November 2020 – Letter from the Chair to the Hon Gladys Berejiklian MP, Premier, inviting her to appear at a future hearing for the inquiry into the integrity, efficacy and value for money of NSW Government grant programs.
- 11 November 2020 - Letter from the Chair to Ms Laura Clarke, Former Chief of Staff, Office of the Deputy Premier, re-inviting her to appear at the hearing on 9 December 2020 and noting the committee will summon her if she declines.
- 17 November 2020 – Email from the secretariat to Mr Kevin Wilde providing reasons for the committee's request he appear as witnesses at the hearing on 9 December 2020.

## 5. Inquiry into the NSW Government's management of the COVID-19 pandemic

### 5.1 Answers to questions on notice and supplementary questions

The following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- the Hon Gareth Ward MP and witnesses from the Department of Communities and Justice
- the Hon Brad Hazzard MP and Dr Kerry Chant PSM
- the Hon Don Harwin MLC and Ms Kate Foy
- the Hon Victor Dominello MP, Ms Rose Webb and Mr Paul Sariban.

The following answers to supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- the Hon Gareth Ward MP.

## 6. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs

### 6.1 Public submissions

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committees: submission nos 100-102.

### 6.2 Answers to questions on notice

The following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Cr Khal Asfour, Mayor, Canterbury-Bankstown Council, received 23 October 2020.
- The Hon Peter Hall QC, Commissioner, Independent Commission Against Corruption, received on 11 November.
- Mr Chris Hangar, Deputy Secretary, Public Works Advisory and Regional Development, Department of Regional NSW, received on 12 November.
- Ms Margaret Crawford, Auditor-General, including answers to supplementary questions, received on 12 November.

- Ms Sarah Lau, Senior Policy Advisor, Office of the NSW Premier, received on 20 November.
- Answers to supplementary questions from Ms Sarah Cruickshank, Former Chief of Staff, Office of the NSW Premier, received on 20 November.
- Answers to questions on notice from Ms Sarah Cruickshank, Former Chief of Staff, Office of the NSW Premier, received on 24 November.

### **6.3 Future inquiry activity**

Resolved, on the motion of Mrs Houssos: That the chair circulate via email the draft witness list relating to Arts government grants for feedback from members by Monday 7 December 2020.

### **6.4 Allocation of questioning**

Resolved, on the motion of Mr Graham: That the sequence of questioning to be asked at the hearing is to be left in the hands of the chair.

### **6.5 Due date for answers to questions on notice and supplementary questions**

Resolved, on the motion of Mrs Houssos: That answers to questions on notice and supplementary questions from today's hearing are due by Tuesday 12 January 2021.

### **6.6 Request for virtual appearance**

Resolved, on the motion of Mr Graham: That the secretariat write to Mr Kevin Wilde, Former Chief of Staff, Office of the Former Minister for Local Government indicating the committee's strong preference that he appear at the hearing on 9 December 2020 in person and noting the committee can assist in paying for petrol and provide free parking.

### **6.7 Tended documents from hearing on 21 September 2020**

Resolved, on the motion of Mrs Houssos: That the committee publish the documents tendered by Cr Darcy Byrne, Mayor of Inner West Council at the hearing on 21 September 2020 and correspondence from Mr Tim Hurst regarding the publication of the documents tendered by Cr Byrne, received 12 November 2020.

### **6.8 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witnesses were sworn and examined:

- Cr Nuatali Nelmes, Lord Mayor, City of Newcastle (*via Webex*)
- Mr Simon Massey, Economic Strategy and Government Relations Manager, City of Newcastle (*via Webex*).

Mr Simon Massey tendered the following documents:

- Documents entitled 'The Newcastle Response' to COVID-19 challenges, for arts sector, youth unemployment, tourism sector, community sector, and innovation economy.

Mrs Ward joined the meeting.

Mr Khan joined the meeting.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Paul Scully MP, Member for Wollongong
- Mr Tim Crakanthorp MP, Member for Newcastle.

Mr Tim Crakanthorp MP tendered the following document:

- Document outlining upgrades required to Passmore Oval, Wickham Park.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Shelley Oldham, General Manager, Lismore City Council (*via Webex*)
- Mr Tim Mackney, Manager Infrastructure Delivery, Tweed Shire Council (*via Webex*)
- Mr Anthony McMahon, Director, Assets and Operations, Bega Valley Shire Council (*via Webex*).

Mr Graham left the meeting.

The evidence concluded and the witnesses withdrew.

The committee proceeded to deliberate in private.

Witnesses, the media and the public withdrew.

### **6.9 Acting Chair**

Resolved, on the motion of Mrs Houssos: That, as the Deputy Chair is not present and the Acting Deputy Chair is appearing via videoconference, Mr Graham act as Chair this day for any time in which the Chair is absent from the room for the purposes of the hearing only.

### **6.10 Answers to questions on notice received from Sarah Lau**

Mrs Houssos moved: That the committee respond to Ms Sarah Lau requesting more comprehensive answers to the questions on notice and supplementary questions arising from the hearing on 23 October 2020 by 7 December 2020 and noting the committee will review the sufficiency of her answers and may recall her for further questioning.

Question put.

The committee divided.

Ayes: Mrs Houssos, Mr Khan, Mr Shoebridge.

Noes: Mrs Ward.

Question resolved in the affirmative.

The committee noted Mrs Ward's further opposition to this resolution.

### **6.11 Public hearing**

Mr Graham joined the meeting.

Witnesses, the public and the media were re-admitted.

The following witnesses were sworn and examined:

- Mr Gerard Van Emmerik, Manager Community & Economic Development, Federation Council (*via Webex*)
- Cr Phillip O'Connor, Mayor, Brewarrina Shire Council (*via Webex*)
- Mr Jeff Sowiak, General Manager, Brewarrina Shire Council (*via Webex*)
- Ms Jacquelyn Richards, Portfolio General Manager, Community Choice, Queanbeyan-Palerang Regional Council (*via Webex*).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Cr Bill West, Regional Prosperity Portfolio Mayor, Central NSW Joint Organisation
- Cr Rowena Abbey, Chair, Canberra Region Joint Organisation and Chair, NSW Joint Organisations Chairs' Forum (*via Webex*)
- Ms Kalina Koloff, Chief Executive Officer, Canberra Region Joint Organisation (*via Webex*)
- Cr Bob Pynsent, Chair, Hunter Joint Organisation (*via Webex*)
- Mr Joe James, Chief Executive Officer, Hunter Joint Organisation
- Mr Steve Wilson, Director of Regional Policy and Programs, Hunter Joint Organisation.

Cr Bill West tendered the following document:

- Various case studies outlining the involvement of Central NSW Joint Organisation in NSW Government grant programs.

Mr Shoebridge left the meeting.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.55 pm.

Witnesses, the media and the public withdrew.

#### **6.12 Tendered documents**

Resolved, on the motion of Mr Khan: That the committee accept and publish the following documents tendered during the public hearing:

- Mr Simon Massey, Economic Strategy and Government Relations Manager, City of Newcastle- Documents entitled 'The Newcastle Response' to COVID-19 challenges, for arts sector, youth unemployment, tourism sector, community sector, and innovation economy.
- Mr Tim Crakanthorp MP, Member for Newcastle - Document outlining upgrades required to Passmore Oval, Wickham Park.
- Cr Bill West, Regional Prosperity Portfolio Mayor, Central NSW Joint Organisation - Various case studies outlining the involvement of Central NSW Joint Organisation in NSW Government grant programs.

#### **6.13 Further submission from NSW Government**

Resolved, on the motion of Mr Graham: That the Chair write to the Department of Premier and Cabinet inviting them to provide a more detailed submission to the inquiry.

### **7. Adjournment**

The committee adjourned at 4.15 pm, until 9.45 am, Wednesday 9 December 2020 – public hearing for the inquiry into the integrity, efficacy and value for money of NSW Government grant programs.

Monica Loftus  
**Committee Clerk**

#### **Minutes no. 43**

Wednesday 9 December 2020

Public Accountability Committee

Macquarie Room, Parliament House, 9.51 am

#### **1. Members present**

Mr Shoebridge, *Chair*  
Mrs Houssos, *Acting Deputy Chair*  
Mr Graham  
Mr Khan  
Mr Mason-Cox  
Mrs Ward

#### **2. Apologies**

Mr Borsak

#### **3. Previous minutes**

Resolved, on the motion of Mrs Ward: That draft minutes no. 42 be confirmed.

#### 4. Correspondence

The committee noted the following items of correspondence:

##### *Received*

- 24 November 2020 – Email from Mr Chris Rumore, ACP Sub-Committee – Sydney Wharf, to secretariat, raising a number of issues which their strata scheme would like the government to address immediately with regards to recommendations made by the committee for the inquiry into the regulation of building standards, building quality and building disputes.
- 30 November 2020 – Email from Mr Kevin Wilde, Former Chief of Staff, Office of the Former Minister for Local Government, to the secretariat, indicating he will appear at the hearing on 9 December in person.
- 3 December 2020 – Letter from Ms Jodie Hillard to the Deputy Chair, regarding the NSW Government's management of the COVID-19 pandemic.

##### *Sent*

- 26 November 2020 – Email from secretariat, to Mr Chris Rumore, ACP Sub-Committee – Sydney Wharf, responding to his email of the 24 November and suggesting to seek action on their issues from the NSW Fair Trading Commissioner, NSW Building Commissioner or Minister for Better Regulation and Innovation.
- 27 November 2020 – Email from secretariat, to Mr Kevin Wilde, Former Chief of Staff, Office of the Former Minister for Local Government, in response to his request to appear at the integrity of government grants hearing on 9 December 2020 via Webex.
- 30 November 2020 – Letter from the chair to Ms Sarah Lau, Senior Policy Advisor, Office of the Premier, requesting more substantial answers to questions on notice and supplementary questions arising from the integrity of government grants hearing on 23 October 2020.
- 30 November 2020 – Letter from the chair to Mr Tim Reardon, Secretary, Department of Premier and Cabinet, requesting he provide a more detailed whole-of-government submission to the integrity of government grants hearing.

#### 5. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs

##### 5.1 Answers to further supplementary questions from Sarah Lau

The following answers to further supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Ms Sarah Lau, Senior Policy Advisor, Office of the Premier, received on 7 December 2020.

##### 5.2 Witnesses for 1 February hearing

Resolved, on the motion of Mr Graham: That the Chair confer with members regarding witnesses for the 1 February arts grants hearing and will circulate a revised witness list by Wednesday 16 December 2020.

##### 5.3 Allocation of questioning

Resolved, on the motion of Mr Graham: That the sequence of questions to be asked at the hearing is to alternate between the opposition and crossbench, with 10 minutes reserved at the end of each session for government questions.

##### 5.4 Due date for answers to questions on notice

Resolved, on the motion of Mr Khan: That answers to questions on notice and supplementary questions from the hearing on 9 December 2020 are due by Monday 25 January 2021.

##### 5.5 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witness was sworn and examined:

- Mr Matthew Crocker, Former Policy Director, Office of the Premier.  
The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Laura Clarke, Former Deputy Chief of Staff, Office of the Deputy Premier.

Mr Shoebridge tendered various documents relating to the Stronger Community Fund returned to the Legislative Council under standing order 52 and to Portfolio Committee No. 7 – Planning and Environment as part of Budget Estimates 2019-2020.

Mrs Houssos tendered a document relating to the Stronger Community Fund returned to the Legislative Council under standing order 52.

Mr Graham tendered various documents relating to the Stronger Community Fund returned to the Legislative Council under standing order 52.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Kevin Wilde, Former Chief of Staff, Office of the Former Minister for Local Government.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Tony Harris, Former NSW Auditor-General.

The evidence concluded and the witness withdrew.

The public hearing concluded at 3.45 pm.

Witnesses, the media and the public withdrew.

#### **5.6 Additional further supplementary questions to Sarah Lau**

Resolved, on the motion of Mr Graham: That the committee put additional further supplementary questions to Ms Sarah Lau, Senior Policy Advisor, Office of the Premier by 25 January 2021 and that proposed questions be circulated by Wednesday 16 December 2020 to be agreed on over email.

#### **5.7 Future hearing activity**

Mr Graham moved: That the committee invite the following Ministers to appear as witnesses at the hearing on 8 February 2021:

- the Hon Gladys Berejiklian MP, Premier (noting she has previously declined)
- the Hon John Barilaro MP, Deputy Premier
- Ms Gabrielle Upton MP, Former Minister for Local Government.

Question put.

The committee divided.

Ayes: Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Question resolved in the affirmative on the casting vote of the chair.

#### **5.8 Tended documents**

Resolved, on the motion of Mrs Houssos: That the committee accept and publish the following documents tendered during the public hearing:

- Mr Shoebridge - Various documents relating to the Stronger Community Fund returned to the Legislative Council under standing order 52 and to Portfolio Committee No. 7 – Planning and Environment as part of Budget Estimates 2019-2020.

- Mrs Houssos - A document relating to the Stronger Community Fund returned to the Legislative Council under standing order 52.
- Mr Graham - Various documents relating to the Stronger Community Fund returned to the Legislative Council under standing order 52.

## 6. Adjournment

The committee adjourned at 3.55 pm, *sine die*.

Monica Loftus  
Committee Clerk

## Minutes no. 44

Monday 1 February 2021  
Public Accountability Committee  
Jubilee Room, Parliament House, 9.16 am

### 1. Members present

Mr Shoebridge, *Chair*  
Mr Borsak, *Deputy Chair* (via Webex)  
Mr Fang (via Webex, substituting for Mr Khan until 1.00 pm)  
Mr Graham  
Mrs Houssos  
Mr Khan (from 2.00 pm)  
Mr Mason-Cox (via Webex)  
Mr Secord (participating until 1.00 pm)  
Mrs Ward

### 2. Previous minutes

Mr Graham moved: That draft minutes no. 43 be confirmed.

Mrs Ward moved: That the motion of Mr Graham be amended by inserting 'and former Labor staffer' after 'Mr Tony Harris, Former NSW Auditor-General' in draft minutes no. 43 item 5.5.

Question of Mrs Ward put.

The committee divided.

Ayes: Mr Fang, Mr Mason-Cox, Mrs Ward.

Noes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Question resolved in the negative.

Original question of Mr Graham put and passed.

### 3. Correspondence

The Committee noted the following items of correspondence:

#### *Received*

- 10 December 2020 – Email from Ms Cathy Merchant, to the committee, forwarding letters sent to the Independent Commission Against Corruption and the Hon Shelley Hancock, Minister for Local Government, in relation to the Stronger Communities Fund.
- 10 December 2020 – Letter from Mr Ross McLeod, General Manager, Waverley Council to Clerk of the Parliaments, expressing concern regarding the administration of the Stronger Communities Fund.

- 15 December 2020 – Letter from Mr Tim Reardon, Secretary, Department of Premier and Cabinet, to the Chair, declining the committee's invitation to provide a further submission to the inquiry.
- 16 December 2020 – Letter from the Hon John Barilaro MP, Deputy Premier and Minister for Regional NSW, accepting the committee's invitation to appear at the hearing on 8 February 2020.
- 17 December 2020 – Letter from Ms Gabrielle Upon MP, Former Minister for Local Government, declining the committee's invitation to appear at the hearing on 8 February 2020.
- 17 December 2020 – Letter from Neil Harley, Chief of Staff, Office of the Premier, declining the committee's re-invitation for the Premier to appear at the hearing on 8 February 2020.
- 3 January 2021 – Email from Ms Cathy Merchant, to the committee, attaching a letter sent to the Australian Sports Commission regarding a Stronger Communities Fund grant in Hunters Hill.
- 22 January 2021 – Letter from Mr Adam Lindsay, Executive Director, State Archives and Records Authority NSW to the Chair, attaching a copy of the Authority's recordkeeping assessment of the Office of the Premier and records relating to the Stronger Communities Fund grants and recommending the report be made public.
- 25 January 2021 – Letter from the Hon Natasha Maclaren-Jones MLC, Government Whip, advising that the Hon Wes Fang MLC will substitute for the Hon Trevor Khan MLC for the morning session of the hearing on 1 February 2021.
- 27 January 2021 – Email from Trish Marinozzi, Office of the Opposition Whip, advising that the Hon Walt Secord MLC will be a participating member for the morning session of the hearing on 1 February 2021.

***Sent***

- 10 December 2020 – Letter from the Chair to the Hon Gladys Berejiklian MP, Premier, re-inviting her to appear as a witness at the hearing on 8 February 2021.
- 10 December 2020 – Letter from the Chair to the Hon John Barilaro MP, Deputy Premier, inviting him to appear as a witness at the hearing on 8 February 2021.
- 10 December 2020 – Letter from the Chair to the Ms Gabrielle Upon MP, Former Minister for Local Government, inviting her to appear as a witness at the hearing on 8 February 2021.

**4. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs****4.1 Confidential submission**

Resolved, on the motion of Mrs Houssos: That the committee keep submission no. 103 confidential, as per the request of the author.

**4.2 Answers to questions on notice**

The following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Mr Gerard Van Emmerik, Manager Community and Economic Development, Federation Council, received 11 December 2020
- Mr Tim Mackney, Manager, Infrastructure Delivery, Tweed Shire Council, received 8 January 2021
- Mr Anthony McMahon, Director, Assets and Operations, Bega Valley Shire Council, received 12 January 2021
- Mr Simon Massey, Economic Strategy and Government Relations Manager, City of Newcastle, received 12 January 2021
- Ms Jacquelyn Richards, Portfolio General Manager, Community Choice, Queanbeyan-Palerang Council, received 15 January 2021
- Mr Jeff Sowiak, General Manager, Brewarrina Shire Council, received 15 January 2021.
- Ms Laura Clarke, Former Deputy Chief of Staff, Office of the Deputy Premier, received 25 January 2021.

#### 4.3 Extension of reporting date

Mr Graham moved:

- That the committee amend the terms of reference to extend the inquiry reporting date to 29 July 2021 and produce a first report focusing on the Stronger Communities Fund and local government grants, to be tabled by 31 March 2021 with a deliberative meeting on 22 March 2021
- That the Chair inform the House of the change to the terms of reference.

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Fang, Mr Mason-Cox, Mrs Ward.

Question resolved in the affirmative.

#### 4.4 Attendance of Deputy Premier at hearing on 8 February

Resolved, on the motion of Mrs Houssos: That the Hon John Barilaro MP appear as a witness at the hearing on 8 February 2021 from 10.00 am to 11.45 am with time for questioning allocated as follows:

- 10 minutes allowed for an opening statement,
- question time allocated between opposition and crossbench for 2 rounds of 20 minutes each, and
- 15 minutes reserved at the conclusion of opposition and crossbench questions for government questions.

#### 4.5 Bushfire grants

Mrs Houssos moved: That the committee examine bushfire grant funding, including previous and current rounds of funding and undertake the following activities:

- re-open the submission portal and accept submissions until 22 February 2021
- hold two full-day activities on bushfire grants in April/May 2021, with the secretariat to canvass member availability.

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Fang, Mr Mason-Cox, Mrs Ward.

Question resolved in the affirmative.

#### 4.6 Allocation of questioning

Resolved, on the motion of Mr Graham: That the allocation of time for questioning at today's hearing be as follows:

- for all 45 minutes sessions: Equal time allocated between opposition and crossbench with 5 minutes reserved at the end for government questions
- for the 2 hour session of government witnesses: Equal time allocated between opposition and crossbench with 15 minutes reserved at the end for government questions.

#### 4.7 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witnesses were sworn and examined:

- Mr David Clarkson, Board Member, Theatre Network NSW
- Ms Michelle Silby, Executive Director, Ausdance NSW (via Webex)
- Ms Elizabeth Rogers, Chief Executive Officer, Regional Arts NSW (via Webex).

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr John Wardle, Consultant, Live Music Office.

The evidence concluded and the witness withdrew.

- Ms Penelope Benton, Acting Chief Executive Officer, National Association for the Visual Arts (via Webex).

The evidence concluded and the witness withdrew.

Mr Secord made a declaration of a potential conflict of interest.

The following witness was sworn and examined:

- Ms Jane McCredie, Chief Executive Officer, Writing NSW.

The evidence concluded and the witness withdrew.

Mr Fang and Mr Secord left the meeting.

Mr Khan joined the meeting.

The following witnesses were sworn and examined:

- Ms Kate Foy, Deputy Secretary, Community Engagement, Department of Premier and Cabinet
- Mr Chris Keely, Executive Director, Create NSW, Department of Premier and Cabinet
- Ms Annette Pitman, Head of Create Infrastructure, Create NSW, Department of Premier and Cabinet.

The following witnesses were examined on former oath:

- Mr Chris Hanger, Deputy Secretary, Public Works Advisory and Regional Development, Department of Regional NSW
- Mr Jonathan Wheaton, Executive Director, Public Works Advisory and Regional Development, Regional Programs, Department of Regional NSW.

Mrs Houssos tendered the following document: Document ordered under standing order 52 entitled 'Briefing for the Deputy Premier: A2498705: Bringing forward funding under the Regional Cultural Fund'.

The evidence concluded and the witnesses withdrew.

Mr Borsak left the meeting.

The public hearing concluded at 3.57 pm.

Witnesses, the media and the public withdrew.

#### **4.8 Tendered documents**

Mrs Houssos moved: That the committee accept and publish the following document tendered by her today: Document ordered under standing order 52 entitled 'Briefing for the Deputy Premier: A2498705: Bringing forward funding under the Regional Cultural Fund'.

Mrs Ward moved: That the motion of Mrs Houssos be amended by inserting 'that Mrs Houssos provide a clean copy of the tabled document or that the secretariat record that marks on the document were made after it was received by the Legislative Council'.

Question of Mrs Ward put and passed.

Amended question of Mrs Houssos put and passed.

## 5. Adjournment

The committee adjourned at 4.05 pm, until 11.00 am Tuesday 2 February 2021 – report deliberative meeting for the inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales.

Monica Loftus  
Committee Clerk

### Minutes no. 46

Monday 8 February 2021  
Public Accountability Committee  
Jubilee Room, Parliament House, 9.45 am

#### 1. Members present

Mr Shoebridge, *Chair*  
Mrs Houssos, *Acting Deputy Chair*  
Mr Graham  
Mr Khan  
Mr Mason-Cox (via Webex)  
Mrs Ward

#### 2. Apologies

Mr Borsak

#### 3. Previous minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 44 be confirmed.

#### 4. Correspondence

The Committee noted the following items of correspondence:

##### *Received*

- 2 February 2021 – Email from Ms Madeleine Thomas, Executive Director, Planning, Environment and Resources, Department of Planning, Industry and Environment, requesting further reasons for Mr Hurst's invitation and requesting that he only appear for an hour.
- 7 February 2021 – Letter from the Hon John Barilaro MP, Deputy Premier and Minister for Regional NSW, to the Chair, regarding claims of pork-barrelling related to bushfire relief grants.

##### *Sent*

- 2 February 2021 – Email from secretariat to Ms Madeleine Thomas, Executive Director, Planning, Environment and Resources, Department of Planning, Industry and Environment, confirming Mr Hurst has been invited to attend for 2 hours and in response to her request for further reasons for Mr Hurst's invitation.
- 3 February 2021 – Email from secretariat to stakeholders indicating submission portal has been re-opened.

## 5. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs

### 5.1 Clarification to evidence

Resolved, on the motion of Mrs Ward: That the committee authorise the insertion of the following footnote at the relevant point in the transcript of 9 December 2020: "Mr Crocker requested that the word "not" be omitted as he intended to say: I have given evidence on my advice on those proposals and I would disagree with that characterisation".

### 5.2 Allocation of questioning

Resolved, on the motion of Mrs Houssos: That allocation of questioning of Mr Tim Hurst at today's hearing be as follows:

- The first hour and 45 minutes to be split equally between opposition and crossbench in rounds of 20 minutes
- 15 minutes reserved at the end for government questions.

### **5.3 Election of Acting Deputy Chair**

Resolved, on the motion of Mr Khan: That, for the duration of the inquiry, Mrs Houssos be elected as Acting Deputy Chair for any meeting in which the Deputy Chair is not present.

### **5.4 Publication of correspondence**

Resolved, on the motion of Mr Khan: That the committee publish correspondence from the Hon John Barilaro MP, Deputy Premier and Minister for Regional NSW, to the Chair, regarding claims of pork-barrelling related to bushfire relief grants, received on 7 February 2021 (noted above).

### **5.5 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters. The Chair noted that members of Parliament swear an oath to their office, and therefore do not need to be sworn prior to giving evidence before a committee.

The following witness was admitted and examined:

- The Hon John Barilaro MP, Deputy Premier and Minister for Regional NSW.

The evidence concluded and the witness withdrew.

Mr Barilaro tendered the following documents:

- Map of NSW displaying Regional Growth Fund grants
- Bushfire Local Economic Recovery Fund program guidelines
- Document outlining process of identifying projects and rating fire impact under the Bushfire Local Economic Recovery fund.

Mr Shoebridge tendered the following documents:

- 2 maps indicating distribution of grants under the Bushfire Local Economic Recovery fund.

The evidence concluded and the witness withdrew.

The media and public withdrew.

The committee proceeded to deliberate in private.

### **5.6 Tenders documents**

Mrs Ward moved: That the committee accept and publish the following documents:

- Map of NSW displaying Regional Growth Fund grants, tendered by the Hon John Barilaro MP, Deputy Premier and Minister for Regional NSW
- Bushfire Local Economic Recovery Fund program guidelines, tendered by the Hon John Barilaro MP, Deputy Premier and Minister for Regional NSW
- Document outlining process of identifying projects and rating fire impact under the Bushfire Local Economic Recovery fund, tendered by the Hon John Barilaro MP, Deputy Premier and Minister for Regional NSW
- 2 maps indicating distribution of grants under the Bushfire Local Economic Recovery fund, tendered by the Chair.

### **5.7 Public hearing**

The public and media were re-admitted.

The following witness was examined on former oath:

- Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment.

The witness, media and public withdrew.

The committee proceeded to deliberate in private.

#### **5.8 Private meeting**

The committee deliberated in private.

#### **5.9 Public hearing**

The witness, public and media were re-admitted.

Mr Hurst continued to be examined.

The evidence concluded and the witness withdrew.

The public hearing concluded at 3.10 pm.

The witness, media and public withdrew.

#### **5.10 Correspondence to NSW Treasury**

Resolved, on the motion of Mr Graham: That the Chair write to the Secretary of NSW Treasury requesting an update on the review of Jobs for NSW and that they provide a copy of the review to the committee.

### **6. Adjournment**

The committee adjourned at 3.15 pm, *sine die*.

Monica Loftus  
Committee Clerk

#### **Draft minutes no. 47**

Monday 22 March 2021

Public Accountability Committee

Room 814/815, Parliament House, 9.35 am

#### **1. Members present**

Mr Shoebridge, *Chair*  
Mr Borsak, *Deputy Chair* (via Webex)  
Mr Graham  
Mrs Houssos (from 9.38 am)  
Mr Khan  
Mr Mason-Cox  
Mrs Ward

#### **2. Previous minutes**

Resolved, on the motion of Mr Khan: That draft minutes nos 45 and 46 be confirmed.

#### **3. Correspondence**

The committee noted the following items of correspondence:

##### ***Received***

- 15 February 2021 – Letter from Morven Cameron, Chief Executive Officer, Lake Macquarie City Council, to the Chair, indicating they will not be making a further submission into bushfire relief grants.

- 22 February 2021 – Email from Kylie Rae Alcorn, Director Parliamentary, National Bushfire Recovery Agency, to the secretariat, indicating they will not be making a submission into bushfire relief grants.
- 22 February 2021 – Email from Tracy Burgess, Executive Business Manager, Blue Mountains City Council, to the Chair, requesting an extension on their submission into bushfire relief grants.
- 22 February 2021 – Email from Cr James Hayes OAM, Mayor, Snowy Valleys Council, to the Chair, requesting an extension on their submission into bushfire relief grants.
- 1 March 2021 – Email from Ms Michelle Silby, Executive Director, AusDance NSW, to the secretariat, indicating she will provide answers to questions on notice from the hearing on 1 February shortly.
- 5 March 2021 – Letter from Mr Michael Pratt AM, Secretary, NSW Treasury, regarding the NSW Treasury review of Jobs for NSW.

***Sent***

- 11 February 2021 – Letter from Chair to Mr Michael Pratt, Secretary, NSW Treasury, requesting an update on and copy of the review of Jobs for NSW.
- 15 February 2021 – Letter from the Chair to the President, NSW Legislative Council, requesting the President to progress recommendations in the report entitled 'Budget process for independent oversight bodies and the Parliament of NSW – Final report' concerning the funding model of NSW Parliament.

**4. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs****4.1 Public submissions**

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos 36a, 48a 102a, 104, 106-115.

**4.2 Confidential submission**

Resolved, on the motion of Mr Mason-Cox: That the committee keep submission no. 105 confidential, as per the request of the author.

**4.3 Answers to questions on notice and supplementary questions**

The following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Ms Elizabeth Rogers, Chief Executive Officer, Regional Arts NSW, received 12 February 2021
- Ms Kate Foy, Deputy Secretary, Community Engagement, Create NSW, Department of Premier and Cabinet, received 26 February 2021
- Mr David Clarkson, Board Member, Theatre Network NSW, received 26 February 2021
- Ms Penelope Benton, Acting Chief Executive Officer, National Association for the Visual Arts, received 26 February 2021, including attachments 1 and 2.
- Mr Chris Hanger, Deputy Secretary, Public Works Advisory and Regional Development, Department of Regional NSW, received 1 March 2021
- Mr John Wardle, Consultant, Live Music Office, received 1 March 2021, including attachments 1-3.
- Ms Jane McCredie, Chief Executive Officer, Writing NSW, received 3 March 2021
- Mr Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment, received 8 March 2021
- The Hon John Barilaro MP, Deputy Premier and Minister for Regional NSW, received 9 March 2021.

Resolved, on the motion of Mr Graham: That the committee keep confidential attachment 3 to answers to questions on notice from the National Association for the Visual Arts, entitled 'NAVA's COVI-19 ongoing impacts survey' as it contains names and contact details of individuals.

Mrs Houssos joined the meeting.

**4.4 Additional information from witness**

The following additional information provided as part of an answer to question on notice was published by the committee clerk under the authorisation of the resolution appointing the committee:

- Letter from Ms Kate Foy, Deputy Secretary, Community Engagement, Create NSW, Department of Premier and Cabinet, relating to her evidence given on 1 February 2021, received 8 March 2021.

#### 4.5 Extension for provision of supplementary questions

The committee noted it had previously agreed via email that the Deputy Premier be given an additional two weeks to provide answers to supplementary questions arising from the hearing on 8 February 2021.

#### 4.6 Witness list for future hearing

Resolved, on the motion of Mrs Houssos: That the following organisations and individuals be invited to appear as witnesses at the hearing into bushfire relief grants on 26 April 2021, to appear either in-person or over Webex:

- Local government panel – 1 hr
  - Central Coast Council (sub 114)
  - Blue Mountains City Council (sub 115)
- Local government panel – 1 hr
  - Bega Valley Shire Council (sub 36a)
  - Snowy Valleys Council (sub 48a)
  - Queanbeyan-Palerang Council (sub 109)
- Residents panel – 45 mins
  - Mr Frank Ross (sub 108)
  - A Better Eurobodalla (sub 111)
  - Dr Clare Buswell (sub 112)
- NSW Government panel – 1 hr, 45 mins
  - Department of Regional NSW
  - Resilience NSW
- MP panel – 45 mins
  - Ms Trish Doyle MP, Member for Blue Mountains
  - Ms Tamara Smith MP, Member for Ballina (sub 113)
  - Mr Joe McGirr MP, Member for Wagga Wagga.

#### 4.7 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Integrity, efficacy and value for money of NSW Government grant programs: First report*, which, having been previously circulated, was taken as being read.

##### Chapter 1

Resolved, on the motion of Mr Graham: That paragraph 1.1 be amended by inserting 'grant funds, including' before 'the Stronger Communities Fund'.

Resolved, on the motion of Mr Graham: That paragraph 1.2 be amended by omitting 'estimated 80 per cent' and inserting instead 'overwhelming majority'.

Resolved, on the motion of Mrs Ward: That paragraph 1.10 be amended by:

- omitting 'two' and inserting instead 'three' after 'administered or supported by'
- inserting 'and the Office of Local Government, in the Department of Planning, Industry and Environment' after 'Department of Regional NSW'.

Resolved, on the motion of Mr Graham: That the table in paragraph 1.27 be amended by inserting 'and suspended from the House for the rest of the sitting day' before 'for failure to produce individual project briefs'.

##### Chapter 2

Resolved, on the motion of Mrs Houssos: That the following new paragraph be inserted after paragraph 2.37:

'When approving grants, Federal Ministers are required to provide written reasons if they exercise their ministerial discretion and do not follow the recommendation provided by the public service. [FOOTNOTE: Submission 92, Independent Commission Against Corruption, pp 4-5; Australia Government Department of Finance, *Approving a grant: Briefing requirements: What do officials need to document?* <<https://www.finance.gov.au/government/commonwealth-grants/approving-grant>>.] However, NSW Ministers do not have the same obligation.'

Resolved, on the motion of Mrs Houssos: That paragraph 2.47 be amended by:

- a. omitting 'and unsuccessful' after 'details of successful'
- b. inserting at the end: 'Details of unsuccessful applicants must be made available to oversight bodies, including the Parliament of NSW, on request.'

Mrs Houssos moved: That paragraph 2.51 be amended by:

- a. omitting 'and limited to suggesting possible projects and not stray into decision-making' after 'role in a grant program should be clearly defined'
- b. inserting at the end: 'If local members are to have a decision-making role in a grant program, it should be clearly outlined in the guidelines.'

The committee divided.

Ayes: Mr Graham, Mrs Houssos, Mr Khan, Mr Mason-Cox, Mrs Ward.

Noes: Mr Borsak, Mr Shoebridge.

Question resolved in the affirmative.

Resolved, on the motion of Mrs Houssos: That paragraph 2.53 be amended by omitting 'extreme' after 'should be exercised with'.

Resolved, on the motion of Mr Graham: That paragraph 2.55 be amended by inserting 'inappropriately' before 'intervened in an established decision-making process'.

Mr Khan moved: That paragraph 2.96 be omitted.

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That paragraph 2.92 be amended by inserting 'key' after 'and to prescribe minimum'.

Resolved, on the motion of Mrs Houssos: That the following new paragraph be inserted before paragraph 2.92:

'The committee notes that the Good Practice Guide to Grants Administration has not been updated since 2010, the entire time that the Liberals and Nationals have been in government. This is despite significant Audit Office reports during that time that are relevant, including most recently into the Federal sports rorts scandal released in January 2020. Indeed the last update 10 years ago was in the wake of a relevant Audit Office report, and sought to implement those recommendations.'

Mrs Ward moved: That Recommendation 1 be amended by omitting 'Further, that the NSW Government codify the updated Good Practice Guide to Grants Administration in legislation or regulation to ensure it is enforceable.'

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Noes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That Recommendation 1 be amended by omitting 'Further, that the NSW Government codify the updated Good Practice Guide to Grants Administration in legislation and regulation to ensure that it is enforceable' and inserting instead the following new recommendation:

**'Recommendation X**

That the NSW Government ensure that key requirements of the Good Practice Guide to Grants Administration are enforceable.'

Mrs Ward moved: That Recommendation 2 be amended by omitting 'create and maintain' and inserting instead 'consider creating and maintaining'.

Question resolved in the negative.

Mrs Ward moved: That Recommendation 3 be amended by omitting 'increase the powers and remit of the Auditor-General of New South Wales to include "follow the dollar" powers, consistent with other Australian State and Territory jurisdictions'.

Question resolved in the negative.

**Chapter 3**

Mr Graham moved: That the following new paragraphs be inserted after paragraph 3.11:

'The Premier also said:

Governments in all positions make commitments to the community in order to curry favour. I think that's part of the political process whether we like it or not

...

The term pork barrelling is common parlance ... and it's not something that I know that the community is comfortable with and if that's the accusation made on this occasion ... well then I'm happy to accept that commentary. [FOOTNOTE: Lucy Cormack and Alexandra Smith, 'Premier says pork barrelling "not illegal" as she defends council grants program', *Sydney Morning Herald*, 26 November 2020.]

The Premier said many of the projects that received funding were in non-government held seats, "but if the accusation is that the government favoured certain areas, well that's an accusation we wear". [FOOTNOTE: *The 7.30 Report*, ABC, 26 November 2020.]

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Question resolved in the affirmative.

Mrs Ward moved: That paragraph 3.10 be amended by inserting 'and former Labor staffer' after 'former NSW Auditor-General'.

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That paragraph 3.36 be amended by inserting 'even after receiving the \$90 million grant' before 'it was still owed a further'.

Resolved, on the motion of Mr Graham: That the heading before paragraph 3.52 be amended by omitting 'Content of the working advice notes' and inserting instead 'The revised guidelines'.

Resolved, on the motion of Mr Graham: That paragraph 3.78 be amended by inserting 'He immediately rang his counterpart Cr Darcy Byrne, Mayor of the Inner West Council who was initially disbelieving and attempted to persuade him that the news could not be correct.' after 'Channel 9 News.'

Mr Khan moved: That paragraphs 3.85 to 3.97 and Findings 1 to 5 be omitted.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Noes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Question resolved in the negative.

Resolved, on the motion of Mrs Houssos: That paragraph 3.86 be amended by omitting 'and why the Premier was involved in announcing regional funding'.

Resolved, on the motion of Mr Graham: That paragraph 3.87 be amended by inserting 'almost exclusively' before 'in Coalition and marginal seats'.

Resolved, on the motion of Mr Graham: That the following new finding be inserted after Finding 1:

**'Finding X**

That, of the \$252 million allocated in the Stronger Communities Fund tied grants round, 95 per cent, which is a total of \$241 million, was allocated to councils in Coalition-held or marginal electorates.'

Mrs Houssos moved: That the following new paragraph be inserted after paragraph 3.90:

'Further, the committee disputes the Premier's characterisation of election commitments as pork-barrelling, and grouping them with grants programs. Election commitments are promises to the electorate to deliver certain projects or funding. Grants programs are very different. They should be an opportunity for projects to fairly compete for funding, assessed against a set of criteria that is clear and publicly available, as outlined in Recommendation X.'

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Question resolved in the affirmative.

Mrs Ward moved: That Finding 1 be omitted.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Noes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That paragraph 3.93 be amended by inserting 'The committee found the evidence of the General Manager of Hornsby Shire Council to be credible, detailed and of great assistance.' after 'as part of the forced amalgamation process.'

Mrs Ward moved: That Finding 2 be omitted.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Noes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That the following new Committee Comment be inserted after paragraph 3.95:

"The provision of the revised guidelines that indicated "Funding will be allocated by the NSW Government based on priorities identified by the NSW Government" was inappropriately broad. The ICAC submission draws attention to probity issues which can arise in a grants scheme, such as "no eligibility or selection criteria, which might include absence of an evaluation methodology and weightings, or criteria that are vague or highly subjective"."

Resolved, on the motion of Mrs Houssos: That paragraph 3.97 be amended by:

- a. inserting 'only' after 'reject evidence that the guidelines were published as they were'
- b. inserting 'as part of the funding agreement, once the grant had been approved' after 'provided to funded councils'.

Mrs Ward moved: That Findings 3, 4 and 5 be omitted.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Noes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Question resolved in the negative.

Mrs Ward moved: That Finding 3 be amended by omitting 'were ambiguous and did not identify with enough specificity' and inserting instead 'could have specified'.

Question resolved in the negative.

Mrs Ward moved: That Finding 5 be amended by:

- a. inserting 'did not' after 'the Office of Local Government'
- b. inserting at the end 'as it was not required to'.

Question resolved in the negative.

Mrs Ward moved: That Recommendation 4 be amended by omitting 'ensure all grant programs have, as an absolute minimum, the following legally binding and mandatory elements' and inserting instead 'consider providing grant program specifications, including the following elements'.

Question resolved in the negative.

Resolved, on the motion of Mrs Houssos: That Recommendation 4 be amended by inserting 'against those criteria' after 'a process for identifying and assessing proposed projects'.

#### **Chapter 4**

Mr Graham moved: That paragraph 4.1 be amended by inserting 'nor was any other appropriate assessment process carried out in any other part of government' after 'the Office of Local Government'.

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Question resolved in the affirmative.

Resolved, on the motion of Mrs Ward: That:

- a. the following new paragraphs be inserted after paragraph 4.48:

'SARA noted, inter alia:

The Authority recognises the cooperation of the Office of the Premier in assisting it to establish this context and providing information about the practices of the Office at the times in question.

and

The Authority acknowledges the high level of risk associated with the profile and functions of the Office of the Premier and makes the following findings as a result of the assessment.

Finding 2: The Authority finds that the records management information in the Ministers' Office Handbook does not adequately support ministerial staff in their creation, capture, management and disposal of State records (and, consequently, their retention of State archives).

and

Finding 4: The Authority did not establish that disposal actions taken in regard to working advice notes were the result of explicit instruction by any staff member within the Office of the Premier.

As a result of the findings, the Authority has made the following recommendations, consistent with its regulatory objectives.

Recommendation 1: Develop and formalise a records management program which would include:

- a) a records management policy, which provides the framework for records management and recordkeeping in ministerial offices, articulates the obligations of and requirements for ministerial staff, and better supports ministerial staff in understanding their recordkeeping requirements;
- b) detailed advice and support for ministerial staff on the creation, capture, management and disposal of records with a focus on reducing any ambiguity or misunderstanding (e.g. treatment of 'working advice notes', 'briefing notes', 'working papers' and 'drafts');
- c) training opportunities for ministerial staff to support compliant recordkeeping within their office's practices, procedures and policies;
- d) regular monitoring of recordkeeping within ministerial offices and the conformity of staff with their recordkeeping requirements;
- e) appropriate technology or systems to support the above recommended actions.

Recommendation 2: Update the Ministers' Office Handbook to provide more detailed information to ministerial staff on their recordkeeping responsibilities and practices.

Recommendation 3: Work with the Authority and its Board to update the *General retention and disposal authority GDA13: Ministers' Office records.*

- b. the secretariat be authorised to set out the information in a way that distinguishes it from recommendations and findings of the committee report, including by using quotations or a table if appropriate, and ensure that all SARA findings are also represented.

Mrs Ward moved: That paragraph 4.51 be amended by inserting 'by executing financial payments under delegation' after 'was responsible for formally approving funding'.

Question resolved in the negative.

Mr Graham moved: That paragraph 4.51 be amended by omitting 'formally approving funding' and inserting instead 'executing financial payments under delegation'.

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Question resolved in the affirmative.

Mr Graham moved: That:

- a. the following new paragraph be inserted after paragraph 4.91:

'The agency administering the fund - the Office of Local Government - did not hold or record any conflicts of interest in relation to these grants. No evidence of any conflict of interest declarations was presented, including in the Office of the Premier and the Deputy Premier.'

- b. the following new Finding be inserted before paragraph 4.127:

**'Finding X**

That the agency administering the fund, the Office of Local Government, did not hold or record any conflicts of interest in relation to these grants. No evidence of any conflict of interest declarations was presented, including in the Office of the Premier and the Deputy Premier.'

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Question resolved in the affirmative.

Mrs Ward moved: That paragraph 4.92 be amended by inserting 'and former Labor staffer' after 'former Auditor-General'.

Question resolved in the negative.

Mrs Ward moved: That paragraph 4.92 be amended by inserting at the end 'although he is not a lawyer and has no professional legal qualifications'.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Noes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That paragraph 4.92 be amended by inserting at the end 'from his perspective as an Auditor'.

Resolved, on the motion of Mr Graham: That paragraph 4.93 be amended by omitting 'may be commencing, or may commence in future, an investigation into aspects of the Stronger Communities Fund' and inserting instead 'has a policy position of not providing direct comment on matters that may at some point be the subject of a formal ICAC investigation. The committee acknowledges the appropriateness of this approach'.

Mrs Ward moved: That paragraph 4.105 and the heading above paragraph 4.105 be amended by inserting 'and former Labor staffer' after 'former Auditor-General'.

Question resolved in the negative.

Mr Khan moved: That paragraphs 4.110 to 4.140, Findings 6 to 10 and Recommendations 5 to 7 be omitted.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Noes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Question resolved in the negative.

Mr Graham moved: That paragraph 4.118 be amended by inserting at the end: 'Due to the lack of any departmental brief recommending the grants, these working advice notes contained the only record of the reasons for the grants, the policy rationale, alternative options or considerations, the advice of the Premier's personal staff and the Premier's own advice as recorded on these notes.'

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Question resolved in the affirmative.

Mr Graham moved: That:

- a. paragraph 4.113 be amended by inserting ', nor did any other agency' after 'to assess the identified projects'
- b. paragraph 4.120 be amended by inserting ', nor did any other agency' after 'had no process for assessing identified projects'
- c. Finding 10 be amended by inserting at the end ', nor did any other agency'.

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Question resolved in the affirmative.

Resolved, on the motion of Mr Graham: That Recommendation 5 be amended by inserting 'the Board of before 'the State Archives and Records Authority'.

Mrs Ward moved: That Recommendation 5 be omitted.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Noes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That paragraph 4.130 be amended by omitting 'The Independent Commission Against Corruption and' and inserting instead: 'As noted above, the Independent Commission Against Corruption has a policy position of not providing direct comment on matters that may at some point be the subject of a formal ICAC investigation.'

Mr Graham moved: That:

- a. Recommendation 6 be omitted as follows: 'That the Audit Office of New South Wales and the Independent Commission Against Corruption commence investigations into the design and administration of the Stronger Communities Fund tied grants round if they have not already done so.' and the following new Recommendations be inserted instead:

**'Recommendation X**

That the Legislative Council refer its concerns regarding the inappropriate design and maladministration of the Stronger Communities Fund tied grants round to the Audit Office of NSW, along with this report and committee transcripts of evidence for investigation.

**Recommendation X**

That the Legislative Council refer its concerns regarding the inappropriate design and maladministration of the Stronger Communities Fund tied grants round to the Independent Commission Against Corruption, along with this report and committee transcripts of evidence for investigation.'

- b. paragraph 4.130 be amended by omitting 'strongly suggests they commence investigations into the fund if they have not done so' and inserting instead 'urges the Legislative Council to refer its concerns and evidence into the Stronger Communities Fund tied grants round to ICAC and the Audit Office for investigation'.

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Question resolved in the affirmative.

**Chapter 5**

Mr Khan moved: That paragraph 5.102 to 5.122 and Recommendations 8 to 13 be omitted.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward.

Noes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That Recommendation 9 be amended by:

- a. omitting 'use' and inserting instead 'consider using'  
 b. omitting 'all large grant programs' and inserting instead 'large grants'.

Resolved, on the motion of Mr Graham: That Recommendation 10 be amended by: omitting 'formally' after 'the recipient has been informed and'.

Resolved, on the motion of Mrs Houssos: That paragraph 5.118 be amended by inserting 'with concern' after 'the committee notes'.

Resolved, on the motion of Mrs Houssos: That the following new Finding be inserted after paragraph 5.119:

**'Finding X**

That it is unacceptable for large regional cities, such as Wollongong and Newcastle, to be excluded when complementary grants programs are designed for both metropolitan and regional areas, such as the Greater Sydney Sports Facility Fund and Regional Sports Infrastructure Fund.'

Resolved, on the motion of Mrs Ward: That Recommendation 11 be amended by omitting 'all' before 'eligibility classifications' and before 'grant programs'.

Mrs Ward moved: That Recommendation 11 be amended by omitting 'standardise' and inserting instead 'consider standardising'.

Question resolved in the negative.

Mrs Houssos moved: That the following paragraph 5.120 be omitted:

"The committee was particularly concerned about evidence that funding announcements are sometimes delayed even further so that a government minister or member can be flown in from outside the area to make a funding announcement. The risk of politicisation in grant funding is evident in how funding is increasingly being announced in this way, and must stop."

The committee divided.

Ayes: Mr Graham, Mrs Houssos, Mr Khan, Mr Mason-Cox, Mrs Ward.

Noes: Mr Borsak, Mr Shoebridge.

Question resolved in the affirmative.

Resolved, on the motion of Mr Graham: That paragraph 5.122 be amended by:

- a. inserting "This has further strengthened the perception present in local councils that if the governance requirements currently in place for councils were applied to the Office of Local Government, the Office would be placed in administration." before "The Office of Local Government should be required".
- b. omitting 'similar requirements' and inserting instead 'routine probity audits'.

Resolved, on the motion of Mr Graham: That Recommendation 13 be amended by inserting 'ensured programs are subject to probity audits' before 'and kept accurate and sufficient records'.

Resolved, on the motion of Mr Graham: That the secretariat prepare two additional paragraphs to be inserted before paragraph 4.131 regarding the quality of evidence received from the Office of Local Government throughout the inquiry, to be circulated by 3.00 pm today and agreed to via email.

Mrs Ward noted her objection to the above resolution.

Resolved, on the motion of Mrs Ward: That the secretariat redact contact details from pages 2 and 8 of Appendix 2.

Resolved, on the motion of Mrs Ward: That the secretariat note on Appendix 3 that it was provided by the Office of Local Government in answers to questions on notice.

Resolved, on the motion of Mr Graham: That:

- The draft report as amended be the report of the committee and that the committee present the report to the House;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours of receipt of the draft minutes of the meeting;
- The secretariat to table the report at 10.00 am Tuesday 30 March 2021.
- The Chair is to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

**5. Adjournment**

The committee adjourned at 11.41 am, *sine die*.

Monica Loftus  
**Committee Clerk**



## Appendix 7 Dissenting statement

**The Hon Trevor Khan MLC, The Nationals**  
**The Hon Matthew Mason-Cox MLC, Liberal Party**  
**The Hon Natalie Ward MLC, Liberal Party**

This Inquiry was established on 3 July 2020 with the intent of bringing greater transparency and public accountability to the process, administration and decision making around government grants programs. The authors of this dissenting statement unreservedly support transparency and accountability. While this has largely informed the committee, the evidence received is not accurately reflected in this report.

This Inquiry looked comprehensively at the Stronger Communities Fund. The intention of the Fund and overwhelmingly its outcomes, were to help councils improve amenities for local communities and the quality of life for citizens of NSW. That is exactly what the Stronger Communities Fund has done, right across NSW. This has included upgrades to parklands, surf clubs, water infrastructure in drought-affected areas, road works, sporting and recreation facilities, tourism, environmental projects and youth facilities. The report fails to acknowledge the evidence received that these are projects that Members of Parliament of all political persuasions have enjoyed. The Members for Heffron, Maroubra and Rockdale proudly posed for photos when the Deli Women and Children's Centre funding was announced. The Member for Granville attended the opening of the Granville Centre. The Member for Balmain communicated that the Village Church Annandale was to receive funding to create an open village garden. Upgrades to Henley Park, in the Leader of the Opposition's seat received funding for upgrades.

The report fails to acknowledge that the Stronger Communities Fund has provided more than \$468 million to local councils to kickstart delivery of much-needed infrastructure for their local communities. The first round provided between \$5 million and \$15 million supporting merged councils, recognising larger councils had higher costs for the merger process. The Government then approved the second round of funding and associated guidelines to support councils in providing community infrastructure projects. This was the Stronger Communities Fund tied grants round.

The guidelines were amended following a decision to allow not just the merged councils, but councils affected by the merger proposal, to receive funds as part of this round.

It is important to acknowledge in this inquiry the evidence that regional communities are not homogenous and require different kinds of support from government. Some regional areas in particular have suffered from historic underinvestment, and the Regional Growth Fund is central in rectifying this inequality. The Government has been able to provide unprecedented infrastructure funding in regional communities via the Regional Growth Fund.

Since 2011, the NSW Government has provided more than \$9.7 billion in financial support to Councils. It is important to acknowledge this context.

In regard to 'Finding 7' of the report, it is important to note that the Information Commissioner, in her *Information and Privacy Commission Report* (IPC Report) found that there had been no breach of the GIPA Act which warranted further investigation.

The Commissioner stated in the IPC Report;

“I have made no adverse finding in respect of the conduct of the Agency [i.e. the Premier’s Office].”

The Government has accepted and is implementing all of the recommendations of the *State Records and Archives Authority Report* (SARA Report). The SARA Report indicated that while there had been a technical breach of the Act, it was not intentional and was the result of a misunderstanding caused by the ambiguous rules and no longer fit-for-purpose instructions.

The SARA Report states:

“It is the view of the Authority that the guidance provided by the Handbook is too broad and without additional specific instructions is likely to have resulted in unauthorised disposal driven by misunderstanding.”

“... the Office of the Premier has been forthcoming and participated openly in our assessment process. The Office has demonstrated an eagerness to improve any practices which might be deficient and take the advice and guidance of the Authority ... [it has been] a productive relationship between the Authority and the public office.”

