

INQUIRY INTO LOCAL GOVERNMENT IN NEW SOUTH WALES

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by General Purpose Standing Committee No. 6

The following is a brief submission in response to the terms of reference of the Inquiry.

The first point I would make is that the review of Local Government undertaken (known as the Samson Inquiry) and the reference to IPART, is predicated very heavily on the work of T Corp as to what is and is not sustainable. In turn this relies very heavily on the concept that local government has a very limited role in Australian democracy- in essence a 'roads, rates and rubbish' philosophy. This ignores the development of local government over the last 30 years, where local government, particularly in the major cities has increasingly taken over (or have been delegated by other tiers of government) a range of community functions- particularly in the community services area. Local government has, certainly in the cities, moved a long way from the initial 19th century concept of what in effect was a roads authority. In rural areas, however, this often remains its primary function.

The Samson Inquiry claimed that it was aiming to 'create a sustainable' system. It made a number of assumptions about what is and is not good local government and what is and is not the role of local government. Whilst in a legal sense, local government in NSW is a creature of the State government in so far as it is established and government by the provisions of the Local Government Act, it is not a state agency in the usually accepted sense. Therefore, whilst it from time to time will have specific roles referred to it by State Government, it also has a discretion within its designated powers under the Local Government Act, and other associated pieces of legislation, to initiate local activity and services not otherwise prohibited.

For example, the Inquiry placed a significant emphasis on the increased role of a Mayor and the skills required for that role. I make one very simple point about the assumptions contained therein. Mayors are politicians. In our democracy, no particular skill is required to be elected to office. This by its very nature ensure that persons from all backgrounds have the opportunity to serve in public office. Any other system, effectively creates some kind of elitist model. A public office holder in a democracy is elected by the constituents. Now in a perfect system we would like to think that everyone elected has the full range of skills, the reality is that skills alone are not the 'be all and end all' of suitability for public office. We have a democracy not a technocracy. The specialist skills must be available within the Council bureaucracy, they are not necessarily required for public office. People get elected by their communities for a variety of reasons. Most are members of political parties and are elected as a consequence of their position on the ticket. We do not, and should not, have a situation where political parties are excluded from local government nor should we have situation where the nature of the electoral system nor the size of the potential electorate in effect precludes a local community activist from have a reasonable opportunity to be elected to a local council. It is important that local government does not simply become overwhelmingly the voice of political parties, the wealthy individual or self seeker. Our communities are a mix of people and interests and that mix ideally should be reflected on the local council.

The elected Council cannot and should not be viewed as a 'board of directors'. A Council is a democratic body responsible for local governance- they are not simply a board of directors entrusted to manage local finances in a manner to ensure that local physical infrastructure is

maintained or expanded. Engineers and Corporate Service Directors do that and submit their options to the Council for determination based upon the priorities of the elected persons.

Much of the public discussion has focused on the revenue side/ financial 'sustainability' arguments. Both the Samson Inquiry and the IPART referral focuses on these aspects. Yet, despite this focus, the Samson Inquiry failed to come to grips with the fact that for many years state governments have 'delegated' their responsibilities for spending (not decision making) to local government. This cost shifting has had a significant impact on local government's capacities.

Whilst much discussion in a succession of reports into local government has tended to centre around road spending and the state of rural roads and bridges, the effect of this type of cost shifting in this area has also been experienced by city based councils.

To cite one example: some years ago the State Government removed from local government a subsidy known as the 'bus route subsidy'. This was essentially a state government subsidy that assisted local government to maintain those local (and in some instances State) roads which were subject to heavy vehicular use (especially by buses). Now in the areas covered by Sydney Buses, this in effect saw local government subsidise the operation of public transport by way of road maintenance. Whilst I believe it be a State responsibility, I can appreciate the role of a local public body (a council) assisting the provision of a public service. However, a significant part of Sydney is not serviced by public transport (buses) but rather by private commercial operations (which are often subsidised by the State by a range of devices- the school bus transport system for example) and have been contracted to provide 'services', often of an inadequate quality, by the State. The effect of the removal of the bus route subsidy in effect saw local communities subsidise the profits of private commercial operators. Now whilst a subsidy to the private sector to provide a service is a legitimate decision of a State Government, to effectively transfer that to local government without discussion was inappropriate. There has also been a number of instances where State roads have been declassified and so became local roads (not that the DMR/RTS/RMS surrendered any determinant role as to use etc) and so transferred the maintenance costs. In the case of Waverley, the State transferred Campbell Parade, but maintained effective use and design control through the former RTA, at a tremendous ongoing cost to Waverley Council.

Within the report of the Samson Inquiry (whose recommendations led to the reference to IPART), there are a number references to 'strategic' objectives. It is interesting that at the same time, there are proposed amendments to the planning legislation that will in effect destroy the role of local government to make those very same strategic planning decisions. In effect the two pieces of potential legislation will create a disconnect in this area.

I would add, that all too often (in the media and the public mind) the role of local government in local 'governance' as prescribed under the Local Government Act, is confused with a council acting as a local consent authority under the provisions of the Environmental Planning and Assessment Act.

The various Inquiries documents often speak of '*an electoral system to ensure councils are representative of their communities*'. A fine sentiment! However, the recommendations of a succession of inquiries into local government over the last 40 years or so (the Barnett report, the Sproats Inquiry etc) invariably go on to advocate amalgamations. The logic of this approach is questionable. The logic seems to be that as the population grows (especially in Sydney) there is a need to reduce the number of Councils and reduce the number of elected persons, and thus access to the democratic process. This inevitably will lead to local government becoming 'administrative units' rather than an element of Australian democracy.

Indeed the most recent inquiry recommended amalgamations not for the sake of financial sustainability (most city based councils are or could be financially stable) but rather, it would seem, so that the financial resources of the city based councils can be amalgamated, so as to allow a greater allocation of Federal grants through the Local Government Grants Commission to be directed towards rural councils. Already rural councils receive a disproportionate allocation per capita of these grant funds due to the existing application of 'disability factors'. In effect this will see most, if not all, of these Federal funds being allocated away from the city based councils- thus transferring additional costs/ or reduced services- to local communities in the cities. Fact: most people in NSW live in the cities.

As a 'spin off' it would allow State Governments to further devolve a range of service delivery responsibilities to local government without additional funding. Inherent within the assumptions of the Samson report, is that amalgamated councils would be able to raise additional revenue either by way of rates and/or charges. This, in effect, would be a back-door way of the State instituting user pay charges or forcing tendering out of services without receiving the public opprobrium resulting from such measures.

To my mind however, the biggest threat inherent in the IPART inquiry and the likely consequence of amalgamation (be they formally 'forced' or merely 'forced' by the 'Fit for Future' device) is the threat to local democracy.

There has been no significant discussion resulting from the various amalgamation intentions and reports as to whether, in order to achieve the ideal of 'representation' referred to above, that the numbers of elected persons should be increased. For example, currently, Waverley (which I am familiar with) has 12 councillors, in 4 wards elected by proportional representation. The quota is 25%+1 which equates, depending on the voter turnout of 3-4000 votes, this is achievable by an independent or minor party. Lets assume an amalgamation of say, Waverley/Randwick/Woollahra- with the application of the current cap on the number of elected Councillors (12). By rough figures Waverley and Woollahra are approximately the same size (about 65000 residents) and Randwick is approximately double (about 135000), this would in effect mean Woollahra would become a 'ward', Waverley would become a 'ward' and Randwick would become two 'wards'. By proportional representation, this would mean , a quota for election would be roughly 16500 voters. Realistically this would favour major political parties and wealthy individuals (or the 'star' candidate) to the exclusion of minor parties and local activists. This is not ensuring democracy. If, on top of this, a 'popular' election of Mayor was instituted, it would guarantee a domination by political parties or the wealthy 'star'. Whilst I generally accept the proposition that State and Federal governments are best elected by single member electorates and the preferential system of voting, I strongly consider that at the local level the electoral model should be proportional representation with an 'electorate' of a size that makes it possible for an individual with energy but of limited financial means, to be elected.

It has to be recognised that there is a significant level of public disillusion with the political process in Australia. There is a very real disconnect between government and the governed. The reasons for this are many, but the fact that governments at State and Federal level have proceeded down economic paths without reference to the electors- such as privatization of public assets and utilities for example- with both major parties, at different times, going hand in hand on this destructive path, has meant that the public generally has developed a cynicism about politics and politicians. The one tier of government where the public feel that they have a real say, a capacity to influence, where their vote can actually effect some level of change, is at a local level. And part of this is due to the relatively smaller units or greater number of elected persons. The local government unit itself is not 'small'. For example Waverley has approximately 65000-70000 residents, compared to the a State seat in Parliament with about 48000 voters. However, due to the ward based system that see 3

councillors elected from each ward, by PR, it means that local community have a real likelihood of knowing or at least making some level of direct and regular contact with an elected person. Having served for 21 years on a Council (7 as Mayor) and 8 years as a State Member of Parliament- I assure you that as a Councillor and/or Mayor the public were much more willing to 'front me up', than when I was the State Member. Basically this came down to a belief that a local councillor could assist with a local issue or policy, whereas a state member (whether a member of governing party or the opposition) was unlikely to be able to affect a change of an unacceptable state policy.

To destroy the nexus of community and local councillors, by creating larger units (as per the Brisbane model or the Auckland model) is a retrograde step and should be rejected.

The proposition within the Samson Report that talks about 'community boards' is vague and, based upon the Auckland model, such 'boards' are of no perceptible benefit or worth. Whilst it is true that the UK has parish councils, and borough councils etc, sitting below, for example, the London Assembly, it has to be remembered that the UK does not have State Government, either does New Zealand. The US model is very different, with local council having significant local powers independent of the States. I would also add that the US local government is often very small outside of the cities. In some instances, local government is effectively carried out by the community meeting/ Town Hall process. France has a large number of small local government units based on villages and communes. Without going into this in greater detail, what is apparent is that the small unit is the preferred 'democratic' unit. Interestingly every time there is a 'review' into local government, the technocratic solution to the 'problem' is amalgamation and larger units (with a reduction in the level of elected representation). The obvious example was the destruction of the GLC by Thatcher and the 'resurrection' of the GLA by the Blair government-with less representation and an executive structure, such that genuine political activism now centres on the local boroughs.

This brings me to my final issue- that the 'executive' role of the Mayor. As a former Mayor, I firmly disagree with this approach. Whilst the question of the Mayor being elected by popular vote has merits and demerits, this does not mean that the Mayoral role should be greater than that of the elected Council. To cite the GLA situation, where the Mayor has an executive role, the role of the other members of the GLA is meaningless in the public mind. On my last trip to London I asked a number relatively politically aware friends who the other members of the GLA were, other than the Mayor. None were able to name more than one. And they were not particularly sure what they did!

Ironically, I actually consider that the removal of the s87 powers under the Local Govt Act 1919, was a retrograde step., in that it placed the General Manager in a position of effective superiority to the elected representatives. If there is any change warranted, in my view, then the provisions of the old s87 should be reinstated (the effect of which would be to leave in no doubt that the elected Mayor, is the actually head of the Council-both the corporate body and the councillors) However, it should also be noted that s87 did not create an executive role whereby the Mayor could act independently of the elected Council (except by limited resolution and in extraordinary circumstances). This structure created an appropriate balance between the Mayoral role, the elected person role and the administrative role of the Town Clerk/General Manager.

As to the idea of a popular vote for Mayor in all councils greater than 20000, I disagree with this being a compulsory outcome. Apart from the obvious circumstance where you could end up with a Council and Mayor being of different political persuasions, it can easily lead to a circumstance where the role of other elected persons is effectively denigrated in the public mind. Again it reflects what I consider to be an elitist strand within the entire discussion about the future of local government in NSW.,

In summary therefore:

1. I do not agree with amalgamations of Councils unless it is by popular constitutional referenda as prescribed under the Local Government Act. If local communities resolve to amalgamate then this is legitimate and should be respected. Forced amalgamation, or deals done behind closed doors by political parties are unacceptable. As such the mega/global city council proposed by the Samson Inquiry, or the lesser Waverley/Randwick/Wollahra option (as favoured by the Sproats Inquiry) or even the current option preferred by the narrow majority of Councillors on Randwick (7-6) and Waverley (6-5 subject to rescission as at 15/6/15) to voluntarily amalgamate Waverley and Randwick, should only come about as a result of votes in agreement by electors in each council area- no other way.
2. I generally do not support a compulsory popular elected mayor model. Each community should be allowed to make that decision based upon a local debate around the pros and cons. The Local Government Act prescribes a method to allow local communities to make that decision-namely a binding 'constitutional' referendum and puts in place a protection against a short term populist motive by prescribing that the decision to have a popular election of Mayor should occur at a subsequent election.
3. The allocation of Federal funds should not drive city based amalgamation arguments. On a basic principle funds should be allocated on a per capita basis, subject to the application of equity principles and clear and understandable disability factors. These disability factors should not include the consequences of State Government cost shifting.
4. Local government is more than roads rates and rubbish. Councils can and should have a major role in local service delivery (largely funded by State or Federal Governments where appropriate), and the development of local social capital as required by their local communities. Further Councils must have the power to choose public or private sector models for service provision. Whichever model is chosen, the employees (either public or private sector) should not be disadvantaged by the decision. Indeed, I would argue that the relevant local government award provisions should apply regardless of whether the service is provided directly by the Council as a public sector model, or by a private contractor as a result of tender for service. This will ensure that the decision is based on quality of service, respect for the rights of employees, not simply on price where the exploitation of the employees (such as two person garbage trucks as is the norm for private contractors, as opposed to three person in council run services) is the basis for the 'profit' in the tender.
5. The T Corp modelling is predicated on an ideological model designed to ensure physical infrastructure that directly benefits the capacity of the private sector to profit from public investment. For example rather than putting the entire cost of local or rural roads onto local communities, there should be a fixed proportion of vehicle registration hypothecated to the maintenance of local and rural roads (and bridges) directly transferable by a fixed formula to local councils. Heavy commercial vehicles (including private profit making mass transport) should be charged at a higher rate than public transport or passenger vehicles for private use etc.
6. To have run the review of local government and the review of planning as separate reviews is to create a disconnect in this area. Indeed, the cynic in me, concludes that the clear objective is to dis-empower local communities by, on one hand burying local concerns and issues in a larger amalgamated units, and on the other hand by ensuring that local communities have no effective say over development in their neighbourhood.

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