

Standing Committee on State Development

**Local government
boundaries in Inner Sydney
and the Eastern Suburbs**

Ordered to be printed according to Resolution of the House

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Terms of Reference

1. That the Standing Committee on State Development inquire into and report on the impact of proposed changes to local government boundaries in Inner Sydney and the Eastern Suburbs (South Sydney, Leichhardt, Waverley, Woollahra and the City of Sydney Councils), and in particular:
 - (a) the economic impact of the proposed boundary changes on the areas affected,
 - (b) the social impact on the communities affected by the changes,
 - (c) the total value of assets owned by each Council in areas that could be affected and the most equitable way to distribute those assets if the boundary changes were to proceed,
 - (d) the extent to which there are differences between the changes recommended by Professor Kevin Sproats in his “Report of an Inquiry into the Structure of Eight Inner Sydney and Eastern Suburbs Councils” and the proposed changes later announced by the Minister for Local Government,
 - (e) whether the Local Boundaries Commission Inquiry into the Government’s proposals has conformed with appropriate legislative requirements,
 - (f) the need for a plebiscite of ratepayers of affected Council areas under section 265 of the Local Government Act 1993.
2. That the Committee report by 31 March 2002.*
3. That, in view of the current proceedings in the Supreme Court and the Land and Environment Court, the Committee not commence its inquiry until a judgment is given in those proceedings. The Committee, in its inquiry, is to have regard to any decision of those Courts impacting on the proposed boundary changes.

* This date was amended as a result of motions in the House: Minutes of the Legislative Council No 9, 10 April 2002, extending the reporting date to 10 May 2002; Minutes of the Legislative Council No 15, 5 June 2002, extending the reporting date to 30 August 2002; Minutes of the Legislative Council No 28, 19 August 2002, extending the reporting date to 24 October 2002; Minutes of the Legislative Council No 40, 24 October 2002, extending the reporting date to 29 November 2002.

Committee Membership

The Hon Tony Kelly MLC	<i>Australian Labor Party</i>	Chair
The Hon Dr Brian Pezzutti RFD MLC	<i>Liberal Party</i>	Deputy Chair
The Hon Ian Cohen MLC	<i>The Greens</i>	
The Hon Henry Tsang MLC	<i>Australian Labor Party</i>	
The Hon Ian West MLC	<i>Australian Labor Party</i>	

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Chair's Foreword

On 13 December 2001, the Standing Committee on State Development received the terms of reference for an inquiry on the impact of proposed changes to local government boundaries in Inner Sydney and the Eastern Suburbs, that included South Sydney, Leichhardt, Waverley, Woollahra and the City of Sydney Councils. The inquiry could not be activated however, as the terms of reference also required relevant court proceedings to conclude before the inquiry could commence.

The Committee has maintained a long standing convention that parliamentary inquiries should not investigate subject matter that is also the subject of legal proceedings. Due to an ongoing appeals process, the Legislative Council continued to extend the inquiry reporting deadline up to 29 November 2002.

On 20 September 2002, South Sydney City Council obtained an injunction to prevent the Minister for Local Government initiating boundary changes until an application for special leave to appeal to the High Court could be heard. The application is scheduled for hearing in the High Court on 14 February 2003, which may extend beyond the present parliamentary term. Accordingly, the Committee has decided to report progress of relevant matters.

In the interim, the Committee encourages the Minister for Local Government to continue negotiations with South Sydney City Council and Leichhardt Municipal Council in an attempt to achieve an amicable resolution.

The Hon Tony Kelly MLC

Chairman

Summary of Recommendations

Recommendation 1

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That the inquiry be deferred until South Sydney Council's appeal to the High Court has concluded.

Recommendation 2

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That the Minister for Local Government continue negotiations with South Sydney City Council and Leichardt Municipal Council to achieve an amicable resolution in respect of the proposed boundary changes.

Chapter 1 Committee response to the terms of reference

Terms of Reference

1.1 On 13 December 2001 the Standing Committee on State Development received the following terms of reference from the Legislative Council:

1. *That the Standing Committee on State Development inquire into and report on the impact of proposed changes to local government boundaries in Inner Sydney and the Eastern Suburbs (South Sydney, Leichhardt, Waverley, Woollahra and the City of Sydney Councils), and in particular:*
 - (a) *the economic impact of the proposed boundary changes on the areas affected,*
 - (b) *the social impact on the communities affected by the changes,*
 - (c) *the total value of assets owned by each Council in areas that could be affected and the most equitable way to distribute those assets if the boundary changes were to proceed,*
 - (d) *the extent to which there are differences between the changes recommended by Professor Kevin Sproats in his "Report of an Inquiry into the Structure of Eight Inner Sydney and Eastern Suburbs Councils" and the proposed changes later announced by the Minister for Local Government,*
 - (e) *whether the Local Boundaries Commission Inquiry into the Government's proposals has conformed with appropriate legislative requirements,*
 - (f) *the need for a plebiscite of ratepayers of affected Council areas under section 265 of the Local Government Act 1993.*
2. *That the Committee report by 31 March 2002.*
3. *That, in view of the current proceedings in the Supreme Court and the Land and Environment Court, the Committee not commence its inquiry until a judgment is given in those proceedings. The Committee, in its inquiry, is to have regard to any decision of those Courts impacting on the proposed boundary changes.*

1.2 The motion for the terms of reference was originally moved by the Hon Duncan Gay MLC, Shadow Minister for Local Government, without point 3. During the ensuing debate the Rev Hon Fred Nile MLC successfully amended the motion to add the qualification requiring that the Committee delay its inquiry until the two court cases were finalised involving the Minister for Local Government, Leichhardt Municipal Council (Leichhardt Council) and South Sydney City Council (South Sydney Council).¹ The nature of these

¹ Rev Hon F Nile MLC, Legislative Council, *Hansard*, 13 December 2001. The Hon D Gay MLC had earlier indicated in his speech that he was willing to accept such an amendment to the terms of reference if members considered it necessary.

cases is discussed at Chapter 3. The reporting date for the inquiry was extended a number of times, to permit time for the court proceedings to conclude.²

Subsequent Committee response

1.3 In accordance with the terms of reference and the ongoing legal proceedings, the Committee did not commence the inquiry and therefore did not call for submissions or hold public hearings.

1.4 The first opportunity for the Committee to deliberate on the matter was at a meeting on 7 February 2002. At that meeting the Committee considered the impact of the Supreme Court judgment on the terms of reference, and made the following resolution:

that, at this point of time, the Committee take no action until the completion of the Boundaries Commission's investigation, after which the Committee will determine its reporting to the House against the terms of reference.³

1.5 Following the release of the Local Government Boundaries Commission (Boundaries Commission) report, the Committee met on 8 April 2002 to consider its response to the terms of reference. The Committee considered a draft report at its meeting on 6 May 2002. The draft report addressed the terms of reference of this inquiry in detail and contained a number of findings and recommendations. In light of the continuing legal action however, the Committee made the following resolution:

that the Committee defer adoption of the draft report until the outcome of the *South Sydney City Council v Minister for Local Government* court case.⁴

1.6 Subsequent to this meeting, the Land and Environment Court delivered its judgment that found in favour of South Sydney Council. The Minister and the Boundaries Commission successfully appealed that decision in the NSW Court of Appeal. South Sydney City Council obtained an injunction to prevent the Minister for Local Government from initiating boundary changes until an application for special leave to appeal to the High Court could be heard. The application is scheduled for hearing in the High Court on 14 February 2003.

1.7 The Committee met again on 22 November 2002 to consider this amended draft report, taking into consideration the continuing legal challenges to the Boundaries Commission report.

² *Minutes of the Legislative Council* No 9, 10 April 2002, extending the reporting date to 10 May 2002; *Minutes of the Legislative Council* No 15, 5 June 2002, extending the reporting date to 30 August 2002; *Minutes of the Legislative Council* No 28, 19 August 2002, extending the reporting date to 24 October 2002; *Minutes of the Legislative Council* No 40, 24 October 2002, extending the reporting date to 29 November 2002.

³ Standing Committee on State Development, minutes No 44, 7 February 2002.

⁴ Standing Committee on State Development, minutes No 51, 27 August 2002.

Comment on terms of reference

- 1.8** The Committee's terms of reference largely duplicate the reference given to the Boundaries Commission, although the reference from the Legislative Council is expressed in more general terms. Should the Committee undertake separate inquiries into its terms of reference, the Committee would undoubtedly refer to the same sources of information as that used by the Boundaries Commission.
- 1.9** Until the validity of the Boundaries Commission report is finally determined by the High Court, the Committee believes it is unable to satisfactorily address terms of reference (a) – (c) and (e) of this inquiry without duplicating much of the work undertaken by the Boundaries Commission.
- 1.10** The two terms of reference that can be adequately addressed without reference to the Boundaries Commission report are term of reference (d) and (f). The Committee's terms of reference (d) require it to report on "the extent to which there are differences between the changes recommended by Professor Kevin Sproats in his 'Report of an Inquiry into the Structure of Eight Inner Sydney and Eastern Suburbs Councils' and the proposed changes later announced by the Minister for Local Government."
- 1.11** During the Supreme Court case a sworn affidavit was submitted by Professor Sproats detailing his opinion regarding the differences between his recommendations and the proposed changes announced by the Minister. This statement is reproduced below:

Between October 2000 and April 2001 I inquired into the structure of local government in the areas of Botany Bay, Leichhardt, Marrickville, Randwick, South Sydney, Waverley and Woollahra. I submitted my report on 20 April 2001. Since then there has been no contact with the Minister for Local Government.

My only knowledge of the recent boundary changes proposed for Sydney City has been gleaned from coverage in the media. I have noted the changes proposed with interest, however, I refrained from making public comment other than to again express my disappointment that it seemed the opportunity for the major reforms I advocated in my report had, at least in the short term, been lost. I agreed to a subsequent interview by ABC Stateline, understanding that the program would focus on the lost opportunity for major reform. While the program did include my disappointment at the seeming loss of the major reforms, my statement of fact about the boundary differences seems to have received considerable attention.

Because this proposed expansion is now before the courts I have agreed to make this statement. In doing so I am advocating neither the government nor councils' positions.

1. The eight main recommendations of my report were directed at achieving significant reform of the structures of local government in the inner-city region and that a recasting of the eight existing councils into four new councils offered the prospect of advancing those reforms.

2. As my recommendations confronted the "no forced amalgamations policy" — which I advocated should be abandoned - I considered several options for at least some alternatives to the recasting recommendation (Recommendation 4). In doing so I raised the possibility of expanding Sydney City and in the first instance concluded that the impact of expanding the city to the size proposed in the recast arrangement (Recommendation 4), without the other recasting, would be too great. I raised the possibility of a less dramatic expansion, listing suburbs that could be included. I stopped short, however, from making a formal recommendation. Although I did not move to a formal recommendation of such expansion, I did make three alternative recommendations to do with Bondi Junction, Port Botany and Sydney Airport.
3. The inquiry received over 400 submissions involving more than 4000 pages of text and fifty hours of public hearings. All written submissions were released publicly on the inquiry web site and remain available for public scrutiny. The breadth of submissions highlighted the interrelationship of the many interests in this inner city region. Local governance in the central area of a metropolitan scale city demands effective participation of all parties with interests in the area. It was for this reason that I stated that I did not consider that referendums or plebiscites of the current council residents "...would advance the changes considered necessary..."
4. From the time the report became public I have consistently expressed my disappointment that, at least in the short term, a significant opportunity for local government reform has been lost. Once the report found its way into the media and the interchange took place between the mayors and the minister the next morning, progress of reform seems to me to have effectively stopped. Nevertheless, I continue to advocate reform of the structures of local government in that inner city region.
5. As stated above, I agreed to the Stateline interview, as the program was to include the larger reform issues. I sought to express again my disappointment that the opportunity for reform appears to have been lost. I have re-watched the program several times and am satisfied that that point was made. Much has been made of my statement that these newly proposed boundaries are not those I recommended. My recommendations were based on the suburbs being distributed into four new council areas. The suburbs I proposed to be added to form an enhanced Sydney City were more extensive than those now proposed by the Minister. The Minister's proposals are similar to those I canvassed as an alternative approach if the "no forced amalgamations" policy was to continue. While the suburbs I canvassed in that alternative have been included, those proposed by the Minister extend to include the university and hospital campuses. This is, however, not inconsistent with the general intent of my "...that for Sydney City to be a dynamic, livable, global city it must have a sizeable residential component". Nevertheless, I remain disappointed in the seeming loss of opportunity for substantial reform as reflected in my comment in the report:

In my analysis and thinking as the Inquiry unfolded I found myself returning several times to remarks made at the public hearings: that any changes without boundary changes will be marginal, but that any boundary changes without fundamental changes to local government itself are hardly worth the

trouble. I found myself agreeing increasingly with both points of view. (p. 46).⁵

- 1.12** The Committee's terms of reference (f) require it to report on "the need for a plebiscite of ratepayers of affected Council areas under section 265 of the Local Government Act 1993".
- 1.13** There is no legislative requirement for a plebiscite to be held for a boundary alteration: section 265 of the *Local Government Act* states that the Boundaries Commission may in its discretion conduct a survey or poll, although participation by rate payers in the survey is voluntary. Plebiscites are typically undertaken for proposed amalgamations and there is little precedent for their use in boundary changes. The judgment on 21 December rejected the argument by Leichhardt Council that the proposal represented an amalgamation or dissolution, and supported the Department's argument that these were boundary alterations.
- 1.14** The Committee does not believe, at this stage, that seeking further input on terms of reference (d) and (f) would provide further clarification.

Structure of this report

- 1.15** The body of this report consists of two chapters. Chapter 2 outlines the events leading up to the Committee's inquiry including the Sproats Inquiry and the Government's response to that inquiry, and the referral to the Boundaries Commission. Chapter 3 summarises events occurring after the Committee received its terms of reference. In particular, South Sydney Council's appeal against the Boundaries Commission's report in the Land and Environment Court is explained. Subsequent appeals in the NSW Court of Appeal and the High Court are also outlined.

⁵ Statement by Professor Kevin Sproats, 31 January 2002, tendered by Department of Local Government in the Supreme Court proceedings (Copy held by Committee).

Chapter 2 Background to the Committee's inquiry

The Sproats Inquiry

- 2.1 The origins of the Committee's terms of reference commenced with the establishment, on 11 October 2000, of a Commission of Inquiry into the structure of local government in the areas of Botany Bay, Leichhardt, Marrickville, Randwick, South Sydney, Sydney, Waverley and Woollahra. Professor Kevin Sproats, Professor of Local and Regional Governance at the University of Western Sydney and Director of the Western Sydney Research Institute, was appointed as Commissioner, and delivered his report on 20 April 2001.
- 2.2 The inquiry received over 500 written submissions and oral presentations from 89 witnesses in eight public hearings. The executive summary and recommendations of the Sproats inquiry appear as Appendix 1. The full report from the inquiry can be found on the Internet at: <http://lginquiry.cadre.com.au>
- 2.3 The key recommendation of that report was the amalgamation of the eight existing councils into four new councils.

Government response to the Sproats Inquiry

- 2.4 Section 218F (1) of the *Local Government Act 1993* (NSW) gives the Minister for Local Government the power to refer a proposal for a boundary alteration to the Local Government Boundaries Commission for examination and report.⁶
- 2.5 On 15 November 2001, the Minister announced that the proposed changes would be referred to the Boundaries Commission for examination, following which negotiations of the transfer would take place between the affected councils.
- 2.6 On 15 November 2001 the Government also announced its response to the Sproats Report. Speaking in the Legislative Assembly on that day, the Hon Harry Woods MP, Minister for Local Government, stated:

As honourable members will recall, one of the recommendations was the recasting of eight councils into four new entities. Although the Government saw merit in that recommendation, we said at the time that we would not proceed without the support of the eight councils involved. That position has not changed and without the support of all the councils, the Government will not be pursuing that option.

However, I announce today that the State Government has accepted some of the other recommendations of the report. They are the transfer of Glebe and Forest Lodge from Leichhardt Municipal Council to the City of Sydney Council, the transfer of Woollahra, Kings Cross, Potts Point, Rushcutters Bay, Elizabeth Bay and Darlinghurst from South Sydney City Council to the City of Sydney Council, and the transfer to Waverley Council of Bondi Junction, which is

⁶ The Boundaries Commission membership, functions and powers are set out in s.260-265 of the *Local Government Act 1983* (NSW).

currently divided between the Waverley and Woollahra councils. In addition, the University of Sydney, the Royal Prince Alfred Hospital and Chippendale will move from the South Sydney City Council to the City of Sydney Council.⁷

Referral to the Boundaries Commission

2.7 The referral to the Boundaries Commission was made on 20 November 2001, by orders published on 30 November 2001 in the *NSW Government Gazette*. These orders, reproduced in Appendix 2, contain detailed street by street descriptions of the proposed boundary changes.

2.8 The orders published in the *Gazette* also contain the terms of reference for the Boundaries Commission report and specify that “the Local Boundaries Commission may not hold an inquiry on this proposal”. Section 263 (2) of the *Local Government Act 1983 (NSW)* states that:

For the purpose of exercising its functions, the Boundaries Commission

(a) may hold an inquiry if the Minister so approves, and

(b) must hold an inquiry if the Minister so directs,

but may not hold an inquiry otherwise than as referred to in paragraph (a) or (b).

2.9 Although no public call for submissions was made by the Boundaries Commission in accordance with the Minister’s direction not to hold an inquiry, it did provide the affected councils the opportunity to comment on the Government’s proposal. The Boundaries Commission then set a closing date of 5 December 2001 for Councils wishing to comment on the Government’s proposals.

Court challenges

2.10 Two of the Councils most affected by the boundary changes, South Sydney City Council and Leichhardt Municipal Council, sought injunctions against the Minister and the Boundaries Commission on the grounds of procedural fairness. An injunction was granted to South Sydney City Council in the Land and Environment Court on 6 December pursuant to a hearing on the merits of the case, while Leichhardt Municipal Council filed its case in the Supreme Court on 4 December 2001.

2.11 A major issue in both cases was that the lack of time (effectively eight days) given to respond to the Commission constituted a lack of procedural fairness. The outcome of these court challenges is discussed in the next chapter of this report.

⁷ Hon Harry Woods MP, Legislative Assembly, *Hansard*, 15 November 2001.

Chapter 3 Events affecting the terms of reference

Supreme Court judgment

- 3.1** The Supreme Court litigation between Leichhardt Municipal Council and the Minister for Local Government was the first judgment relevant to the terms of reference. The full transcript of Justice Sully's judgment, delivered on 20 December 2001 in *Leichhardt Municipal Council v Minister for Local Government & 1 Or* can be found on the Internet at www.austlii.edu.au/au/cases/nsw/supreme_ct/2001/1200.html
- 3.2** Justice Sully identified four issues as defined in the Council's written submissions to be determined:
- (a) The failure of the Minister to refer to the Commission a "proposal" in the sense required by section 218E (1) and section 218F (1) of the Local Government Act
 - (b) The absence of jurisdiction in the Commission to examine and report on the proposal.
 - (c) The failure by the Commission to afford procedural fairness to the Council
 - (d) The absence of any obligation on the part of the Council to comply with the transitional arrangements.⁸
- 3.3** Justice Sully dismissed (a), noting that the proposal was sufficiently detailed for the Council to have prepared two maps based upon the descriptions given. He also rejected the Council's argument in (b) that the proposal was in the nature of a partial dissolution and re-creation of a new local government area of Leichhardt, finding that it was a boundary change and that, the Boundaries Commission did have the jurisdiction to consider the matter.
- 3.4** The issues of procedural fairness, (c), and transitional arrangements, (d), were resolved during the proceedings. The Boundaries Commission agreed to extend the deadline by which submissions by Councils could be considered to 28 February 2002. The Minister also confirmed in correspondence that the Council was not legally bound by any transitional arrangements contained in the boundary alteration proposal.

Withdrawal of Land and Environment Court action

- 3.5** South Sydney Council's action in the Land and Environment Court was based upon similar claims to that of Leichhardt Council. Based upon the concessions given by the Boundaries Commission regarding extended consultation, and on the findings against Leichhardt Council, South Sydney Council withdrew its action on 17 January 2002.

⁸ *Leichhardt Municipal Council v Minister for Local Government & 1 Or*, [2001] NSWSC 1200, per Sully J at para 8.

Local Government Boundaries Commission report

3.6 The Local Government Boundaries Commission released its report on the proposed boundary changes on 20 March 2002. The report recommended that the proposed boundary alterations should proceed:

Having considered the boundary alteration proposal, the support for reform arising out of the Sproats inquiry, the submissions presented to the Commission by the three affected councils, the unsolicited submissions received by the Commission and other material, and having regard to the factors set out in section 263 (3) of the Act, the Commission has reached its recommendation that the boundary alteration proposal should proceed.

Key benefits of the boundary alteration proposal noted by the Commission are:

1. The proposal represents an important step in a wider local government reform process articulated by Professor Sproats and the NSW Government.
2. The proposal will mean that residents and ratepayers in the proposed transfer areas will benefit from rates which will generally be lower than at present while ensuring they have access to high quality services.
3. The proposal will overcome impediments to the provision of infrastructure and services to the proposed transfer areas stemming from the nature of the relationship that currently exists between the three councils.
4. The proposal will enhance the City of Sydney Council with a larger resident population and the incorporation of significant and strategically important gateway access points.
5. The proposal will enable the City of Sydney Council to form strategic alliances with other significant institutions in Sydney, such as Sydney University and the Royal Prince Alfred Hospital, in representing Sydney to the world and in attracting international interest and investment.
6. The proposal will align the boundaries of the City of Sydney with the community of interest profile of the inner Sydney area.⁹

3.7 In releasing the report the Commission indicated it would provide an opportunity for affected councils to meet with the Commissioners up until 12 April 2002. The full text of the report is available at the Department for Local Government website, www.dlg.nsw.gov.au/dlg/dlghome/documents/commissiontribunals/bcsydney_report.pdf.

⁹ Local Government Boundaries Commission, *Examination of the Proposed Boundary Alteration to the Sydney City, Leichhardt and South Sydney Local Government Areas*, (March 2002), p66.

South Sydney Council challenge to Boundaries Commission report in the Land and Environment Court

3.8 Following the release of the Boundaries Commission report, in April 2002, South Sydney Council began an action in the Land and Environment Court against the Minister for Local Government. The judgment was delivered on 14 May 2002. The main assertions of South Sydney Council were summarised by Justice Talbot as follows:

In broad terms the council is asserting that although the Local Government Boundaries Commission (“the BC”) has purported to examine the proposal and report to the Minister for Local Government (“the Minister”), it has done so in breach of provisions of the (“the LGA”) and without affording the council the benefit of procedural fairness in accordance with the principles of natural justice. Accordingly, the Minister should be restrained from recommending to the Governor that the proposal be implemented until such time as the proposal to alter the boundaries of the council’s area is dealt with under Div 2B of Pt 1 in Ch 9 of the LGA. Alternatively, if there is a valid report by the BC, then the council nevertheless claims that the period allowed by the Minister for the making of submissions to him in respect of the proposal is inadequate.¹⁰

3.9 The ‘ultimate determination’ the Court was asked to make therefore was whether or not there had been a breach of the *Local Government Act*, or whether or not there is a threatened or apprehended contravention of or a threatened or apprehended failure to comply with the *Local Government Act*. The effect of such a breach was explained by Justice Talbot:

If the purported function of the BC is a nullity, either because it did not perform its statutory duty to examine and report on the proposal or because of its failure to adopt a process that entails procedural fairness, the Minister is not able to proceed further because the provisions of Div 2B of Pt 1 in Ch 9 of the LGA have not been satisfied. The Minister cannot exercise his function under s 218F(7) and recommend to the Governor that the proposal be implemented unless and until the subject of the proposal is dealt with under Div 2B and in accordance with s 218D of the LGA.¹¹

3.10 Justice Talbot concluded that the Boundaries Commission did not perform the statutory task assigned to it under Div 2B of the *Local Government Act*. It was found that “to a significant extent” the Boundaries Commission deferred its obligations to its consultant, PKF Utility & Government Services (“PKF”) to examine and report on the proposal referred to it, thus failing to fulfil its obligations under the *Local Government Act*,¹² despite adopting PKF’s report as its own.

¹⁰ *South Sydney Council v Minister for Local Government and Another* [2002] NSWLEC 74, per Talbot J, para 2.

¹¹ *South Sydney Council v Minister for Local Government and Another* [2002] NSWLEC 74, per Talbot J, para 48.

¹² *South Sydney Council v Minister for Local Government and Another* [2002] NSWLEC 74, per Talbot J, paras 54, 55.

3.11 With respect to South Sydney Council's claim that the Boundaries Commission did not properly consider all relevant factors before reaching its conclusion, Justice Talbot found that there was a proper, genuine and realistic consideration of the matters referred to in s 263(3) of the *Local Government Act*.¹³

3.12 The final claim by South Sydney Council related to procedural fairness. Justice Talbot concluded that:

The Court is satisfied that the BC took into account material submitted by the CSC [City of Sydney Council]. That material contained adverse information in circumstances where the interest of the council may be seriously affected by the exercise of the statutory power to make the report.¹⁴

and that:

The Court agrees with the applicant that as the adverse material remains undisclosed to the council and the time for the making of submissions to the Minister has expired, the breach of the common law obligation has not been cured. Accordingly, the Court has jurisdiction under s 673 of the LGA to make a declaration in respect of the validity of the threatened act of the Minister to exercise power under s 281F(7) in the absence of a valid report ... For the Minister to make a recommendation to the Governor pursuant to s 218F(7) in the circumstances will be a breach of the LGA.¹⁵

3.13 The final conclusion of the Court was that:

the BC has not satisfied its statutory obligation to examine and report as required by ... the Local Government Act. Furthermore, the report forwarded to the Minister on 20 March 2002 is void as a consequence of the failure on the part of the BC to accord procedural fairness to the applicant. Accordingly, as the BC report is a nullity the jurisdictional pre-condition stipulated by s 218D has not been satisfied.¹⁶

3.14 Justice Talbot's full judgment can be downloaded from the Internet at <http://www.austlii.edu.au/au/cases/nsw/NSWLEC/2002/74.html>.

¹³ *South Sydney Council v Minister for Local Government and Another* [2002] NSWLEC 74, per Talbot J, para 68.

¹⁴ *South Sydney Council v Minister for Local Government and Another* [2002] NSWLEC 74, per Talbot J, para 84.

¹⁵ *South Sydney Council v Minister for Local Government and Another* [2002] NSWLEC 74, per Talbot J, para 89.

¹⁶ *South Sydney Council v Minister for Local Government and Another* [2002] NSWLEC 74, per Talbot J, para 91.

Appeal against Land and Environment Court decision

3.15 The Minister for Local Government and the Boundaries Commission appealed Justice Talbot's decision in the NSW Court of Appeal. The hearing dates were 18 and 19 July and the judgment was delivered on 30 August 2002. There were four issues the Court was asked to consider:

1. whether the Land and Environment Court has jurisdiction to decide an issue of procedural fairness with regard to the Boundaries Commission report because a failure to accord procedural fairness will result in the nullification of the report;
2. whether the Boundaries Commission report suggested consideration of a proposal other than that referred by the Minister on 20 October 2001, and whether the Commission unlawfully delegated their responsibility for preparing the Report to PKF;
3. whether the obligation of the Boundaries Commission to afford procedural fairness extended to providing South Sydney Council access to any submissions adverse to its interests, and
4. whether the Boundaries Commission gave genuine consideration to relevant factors stipulated in section 263(3)(a), (d) and (e2) of the *Local Government Act 1993*.

3.16 The effects of sections 236(3)(a), (d) and (e2) are that, when considering any matter referred to it that relates to the boundaries of areas or the areas of operations of county councils, the Boundaries Commission is required to have regard to the following factors:

- the financial advantages or disadvantages (including the economies or diseconomies of scale) of any relevant proposal to the residents and ratepayers of the areas concerned,
- the attitude of the residents and ratepayers of the areas concerned,
- the requirements of the area concerned in relation to elected representation for residents and ratepayers at the local level, the desirable and appropriate relationship between elected representatives and ratepayers and residents and such other matters as it considers relevant in relation to the past and future patterns of elected representation for that area,
- the impact of any relevant proposal on the employment of the staff by the councils of the areas concerned.

3.17 The Court, consisting of three judges, Justices Speigleman (Chief Justice), Mason and Ipp, allowed the appeal. With respect to the first issue, the Court held that the Land and

Environment Court had jurisdiction to deal with the whole dispute presented before it,¹⁷ including an issue of procedural fairness. The second issue concerned the proposal considered by the Boundaries Commission's report. The Court held that the misdescription of the boundary proposal in Chapter 2 of the Commission's report did not suggest consideration of the wrong proposal by the Commission. The misdescription was considered to be an oversight and the Minister's proposal was the true object of the Commission's examination and report.

3.18 In relation to the issue regarding the Commission's delegation to PKF, the Court concluded that South Sydney Council did not prove that the Commissioners had no personal involvement in the preparation of the report. In addition, it was reasonable for the Commissioners to engage consultants to deal with the volume of material concerned.

3.19 The issue of procedural fairness was central to South Sydney Council's objection to the Boundary Commission's report. The Court held that the Boundaries Commission's obligation to afford procedural fairness did not extend to providing South Sydney Council with access to any submission adverse to its interests. To do so, according to Justice Mason, "effectively converts the examination and report stage [of the Commission's] process into a full-blown adversarial trial".¹⁸ Justice Mason continued later in his judgment:

To posit a right for all "affected" parties to see all of the "adverse" submissions of all other persons putting in submissions would be unworkable, because it would lead to an infinite regression of counter-disputation.¹⁹

3.20 The Court concluded that South Sydney Council received adequate procedural fairness by being given an opportunity to make a submission addressing the factors in section 263(3) of the *Local Government Act*.

3.21 In summary, Justice Mason stated:

At the end of the day, I conclude that to the uncertain extent that the judgment below [Falbot J's judgment] is to be construed as holding that the Report is invalid because of want of procedural fairness by the Commission on this account, that conclusion cannot stand. I do not consider SSCC's interest in relation to each square metre of land in its area is of such a nature as to enliven a duty of prior consultation by the Commission in relation to any advance on the Minister's proposal. The possibility of minor adjustments was always on the cards. There are adjustments and adjustments. SSCC has not shorn that the materiality of these two types of adjustments was of such an order as to call forth a duty of prior disclosure by the Commission.²⁰

¹⁷ *Minister for Local Government & Anor v South Sydney City Council* [2002] NSWCA 288, per Mason P at para 151.

¹⁸ *Minister for Local Government & Anor v South Sydney City Council* [2002] NSWCA 288, per Mason P at para 251.

¹⁹ *Minister for Local Government & Anor v South Sydney City Council* [2002] NSWCA 288, per Mason P at para 268.

²⁰ *Minister for Local Government & Anor v South Sydney City Council* [2002] NSWCA 288, per Mason P at para 283.

- 3.22** The full judgment by all three judges can be downloaded from the Internet at: www.lawlink.nsw.gov.au/caselaw/caselaw.nsf/pages/ca.

South Sydney City Council's appeal to the High Court

- 3.23** On 20 September 2002, South Sydney City Council obtained an injunction against the Minister for Local Government, preventing him from proceeding with the proposed boundary changes, pending an application for special leave to appeal the decision of the NSW Court of Appeal in the High Court. In granting the injunction, Chief Justice Speigelman ordered:

... upon the claimant [South Sydney Council] giving an undertaking to prosecute with due diligence its application for expedition and its application for special leave to appeal to the High Court, the first Opponent [the Minister for Local Government] be restrained from making a recommendation to the Governor to alter the boundaries of the Claimant's area until the determination of the Claimant's application for special leave is granted, until the termination of that appeal...

- 3.24** On 14 October 2002, South Sydney Council was granted leave to apply for special leave to appeal the decision of the NSW Court of Appeal in the High Court. The matter is scheduled for hearing on 14 February 2003. In allowing the application to be expedited, Justice Gaudron commented that:

It does seem a matter of considerable importance to a very large section of the community at least.²¹

- 3.25** In correspondence to the Committee dated 11 November 2002, South Sydney Council outlined its position with respect to the continued dispute over the Boundaries Commission report. The last paragraph states:

South Sydney's Mayor, Councillor Tony Pooley, has publicly stated his preference of a negotiated resolution to the issue. He has to date, been unsuccessful in obtaining support from the Minister for Local Government and the Lord Mayor of the City of Sydney. A negotiated resolution which ensures the continued viability of South Sydney City Council continues to be the Council's preferred position. However, in the absence of any support from the State Government or the City of Sydney, Council will proceed with its application for special leave before the High Court.²²

²¹ South Sydney City Council v Minister for Local Government & Anor S307/2002 (14 October 2002), per Gaudron J - <http://www.austlii.edu.au/au/other/hca/transcripts/2002/S307/1.html>.

²² Correspondence from General Manager, South Sydney City Council, to Committee Director, dated 11 November 2002.

Recommendation 1

That the inquiry be deferred until South Sydney Council's appeal to the High Court has concluded.

Recommendation 2

That the Minister for Local Government continue negotiations with South Sydney City Council and Leichardt Municipal Council to achieve an amicable resolution in respect of the proposed boundary changes.

Appendix 1

The Sproats Inquiry - report
recommendations and executive
summary

EXECUTIVE SUMMARY and RECOMMENDATIONS

On 11 October 2000 His Excellency the Honourable Gordon Samuels, AC, CVO, Governor of the State of New South Wales, by Letters Patent, appointed Professor Kevin Sproats as Commissioner to conduct an Inquiry to the structure of local government in the areas of Botany Bay, Leichhardt, Marrickville, Randwick, South Sydney, Sydney, Waverley and Woollahra. The Inquiry concluded on 20 April 2001. Interest in the Inquiry was very high and the range and scope of issues raised extensive. Almost five hundred written submissions were received and eighty-nine oral presentations made.

A distinctive feature of this Inquiry has been the extensive use of the Internet. A web site was constructed (<http://lginquiry.cadre.com.au/>) and written submissions accepted by email. All submissions were lodged progressively on the web site. Essential background research was undertaken into council operations.

Issues Arising From The Inquiry

Issues are divided into four categories: Places and People; The Councils: Matters for Reform; The Areas: Solutions Offered; Managing any Restructuring. As a precursor to the final recommendations specific conclusions, comments, referrals, suggested actions and the like are made under a general heading of Finding.

Places and People

Considerable emphasis was made of the special characteristics of this region globally and nationally. Its distinctive place in metropolitan Sydney was also acknowledged. Attention was given in particular to the commercial CBD, Sydney Airport, Port Botany, and tourism. One of the striking things demonstrated to this Inquiry was the strong identification people had with the suburbs. Whether it had to do with community identity, property values, participation in local affairs, voluntary associations, it was clear that in the vast majority of cases this was at the level of the suburb not at the local government area. It is apparent many people identify with their local council only to the extent that it is the responsible local government authority in which their suburb is located.

Finding

The present boundary arrangements divide a number of suburbs, split between two or more councils. Early on in this Inquiry it became clear that any changes should at least maintain, if not strengthen, the integrity of the existing suburbs.

It is clear that councils in this region face additional pressures arising from their location. The effective population — people actually in the area at any one time — may be substantially larger than the resident population. These inner-city councils must also address problems of drugs and homelessness. Local interest and participation in governance is very active in some parts of this region.

Finding

Councils must look beyond physical and financial capital. Communities are more than good roads and drains, and balanced budgets. Councils must develop structures and politics to build better communities. In some cases councils will have no alternative but to respond to community pressure. For instance it is apparent that it is the culture of Leichhardt communities that has generated the council philosophy of participation rather than the other way around.

This area has its share of cross-jurisdictional sites, split suburbs, or suburbs requesting transfer from one council to another: Bondi Junction; north ward of South Sydney; Port Botany and Sydney Airport; Pyrmont/Ultimo; Chippendale/Surry Hills; King Street, Newtown; south ward of Randwick; Balmain.

Councils: Matters for Reform.

Local Government in this inner city area needs to become more outward looking whilst retaining its ability to be responsive and enhance a robust system of local democracy. The continuing reform of local government is obliged to facilitate enhanced social, economic, environmental, intellectual and political capital that enables adequate responses to existing and future issues. One of the issues to emerge from this Inquiry is the need for local government to understand the fundamental differences between management plans that guide the organisation and strategic plans for the communities within the councils' jurisdiction.

Finding

The predominant focus for councils as evidenced in their management plans was day-to-day operation. Councils' abilities to think and act strategically need to be enhanced. The ability to take a wider perspective requires encouragement. Several submissions made the point that NSW legislation needs to mandate comprehensive strategic planning. Structures need to be propagated which lift the profile of strategic planning within local government. Strategic planning needs to be resourced so that it is driven both at the community and political level, achieves the necessary import from appropriate professional experts and is adequately funded over the long term.

Strategic planning requires councils to be outward looking, creative and responsive. It allows councils to produce better results for the communities they represent. Strategic priorities for the inner city area, the subject of the Inquiry, include:

- inter-governmental relations
- infrastructure management
- development of structures and ways of doing things which enhance local democracy
- environmental management
- traffic management
- affordable housing
- approaches to social problems such as homelessness and drug addiction
- impacts of globalisation
- enhancement of the urban environment
- service delivery.

Local government's regulatory role in respect of the processing of development applications is often a contentious topic. This Inquiry demonstrated the widespread nature of concern The processing of

development applications is a fundamental local government task. Inconsistency of decision-making, particularly across borders, was raised. The community and elected councillors have a direct role to play as often decisions are a matter of judgement rather than science.

Finding

An emphasis by councils on the inclusive formulation of appropriate plans and development policies by the elected body that are clearly articulated to both residents and applicants would be a good starting point. The inference by a number of submissions was that larger, better resourced councils would be more capable of achieving that outcome.

Any restructuring of councils should facilitate the ability of elected representatives to focus to a greater extent on planning policy formulation and communication. Significant commercial areas or areas that have a high profile in respect of planning issues should ideally come under the umbrella of one local government authority. Councils need to be able to manage cross-border development issues in a consistent manner. In any event, individual councils need to examine innovative ways to deal with development applications in a transparent manner but which also frees up the time of elected representatives to focus more on planning policy development and clear articulation of those policies to the wider community.

Philosophical approaches tended to dominate the wider debate about service delivery. The advantages of big versus small, contracting out as compared to utilising council staff, and the need for efficiency rather than profit were all topics.

Finding

Councils' flexibility to pursue philosophies and approaches to service delivery and to determine priorities should be reinforced. Experimentation and innovation should be encouraged.

Unrestricted current ratio is the performance measure considered to be the most pertinent in terms of a council's financial health. A ratio of less than 1:1 indicates that a council has liquidity problems and needs to take actions to improve the situation. All of the eight councils had ratios of better than 1:1 in the financial years of 1998/99 and 1999/00. In the short term, at least, they are viable. Long-term viability however, appears to be something of a mystery. When it came to discussing financial viability and resourcing the emphasis from all the councils was on revenue or the lack of it. There appeared to be an almost total absence of projected savings in expenditure to be made within the existing structures. Councils argue that expenditures have already been 'cut to the bone' but this is rarely substantiated. It appears that the most significant challenge to the viability of councils in the future relates to the cost of infrastructure, bringing assets up to satisfactory levels.

Finding

It is reasonable to conclude that a number of the councils are likely to be under some financial strain in the future due to the limited ability to raise revenue and the infrastructure requirements in respect of upgrading and maintenance. At the same time, councils are still expected to provide an increasingly broad range of services.

Councils and others submitted that the current government policy of rate pegging was creating significant problems for local government. The basic claim was made that rate pegging limits a council's revenue base. Not only does it limit a council's revenue base but the gap between costs and income increases because rate pegging has not even kept up with the Consumer Price Index (CPI). This situation is exacerbated by the fact that many fees and charges are prescribed in legislation so councils are further restricted in their revenue raising sources. The point was also made that even if rate pegging was lifted the current inequities between council areas would mean that rate increases would need to be so high as to be unacceptable in any event. The Independent Pricing and Regulatory Tribunal examined rate pegging as part of its report on benchmarking local government performance in New South Wales, issued in April 1998. That tribunal concluded that a limit on rate increases was needed in the present circumstances in New South Wales. The Tribunal went on to recommend that the State Government should consider alternatives to the current rate pegging mechanism.

A number of submissions from organisations such as the City of Sydney, the Property Council and the Tourism Taskforce provided economic analysis which demonstrated that economies of scale could achieve substantial savings. The point is often made that there are efficiencies to be gained by increasing the size of councils. Methodologies used to demonstrate this can be debated endlessly and often are. The Independent Pricing and Regulatory Tribunal in its report on local government examined operating costs per capita for the then 177 New South Wales councils and concluded that whilst an analysis illustrated that operating costs per capita reduce with increasing size of councils, the evidence was suggestive rather than conclusive.

Finding

Even though conclusive evidence is not available it is considered that any reconfiguration or reshaping local government within the area covered by this Inquiry should create potential to achieve efficiencies, savings and facilitate the opportunity for councils to address the community concerns and requirements of the future. In the case of councils there is potential to reduce the cost of representation, senior staff and operational costs per service. The extent of any savings depends, nevertheless, upon philosophical approaches.

The City of Sydney introduced the concept of "community dividend". A community dividend is basically the cost savings achieved due to economies of scale. The City of Sydney makes the point that these dividends should go to benefit the community through reduction of the level of rate increases and utilised to fund enhanced services and facilities. It is agreed that any financial benefits should flow on to the communities within the area of the Inquiry.

External relations — i.e. relations across council boundaries, with State and Federal governments and with the private sector - were brought up in the majority of council submissions and other organisations. The nature of relationships was also an issue. The general consensus was that relationships needed to be partnerships rather than ones of supervision or blatant exercise of power. An underlying theme was the need for better coordination and cooperation. The need for coordination within the State Government itself was an issue raised. Intergovernmental cooperation and partnerships between the public and private sectors are perceived to be essential if the pursuit of successful strategies in dealing with issues such as infrastructure management, sustainability, affordable housing and appropriate transport systems are to be achieved.

Finding

The implication here is that larger councils would be more influential in terms of establishing partnership relationships as distinct from subservient ones. Any restructuring of local government in the Inner city area should have the objective of enhancing potential partnership relations.

Ratios of councillors to electors, methods of election, division of councils into wards, and popular election of mayors and their powers, were all matters put to the Inquiry.

Finding

No information put before the Inquiry enables a definitive conclusion about the ideal number of councillors or the ideal representation ratio. What appears to be important is how opportunities are created which enhance democracy and allow the community to participate in information sharing and decision making.

It would be appropriate that any recommended changes enhance the credibility of governance at the local government level. Leadership and the opportunities for community participation should be strengthened and recognise local communities of interest. At the same time the structure of elected representation should enhance councils' abilities to be more strategic and outwardly focused as these are critical requirements of future local government. It is clear that further examination is necessary into wards and popular election of mayors.

The Areas: Solutions Offered

From the start boundaries dominated the public debate. This was fuelled partly by the mayors and taken up in the media. Territorial claims and counter-claims were made. Some boundary disputes were very long standing between councils and between suburbs and their respective councils. The major solutions can be summarised as:

- Leave us alone...
- ... although if you are considering changes
- Larger councils
- Small (virtual) councils
- Seven options from Sydney City
- CBD models
- Bondi Junction
- The Ports

Managing any Restructuring

Perhaps the greatest challenge to reforming local government generally, and particularly in the instance of the inner city is to properly manage change. The immediacy of the Canada Bay experience was not helpful to the Inquiry. It did however demonstrate the need for strong leadership in the change process. The implementation process must be thought through properly and roles and responsibilities clarified during the implementation period. If change is to be implemented, the opportunity should be taken to learn from past experience and establish an implementation process that has credibility and integrity.

Councils such as Leichhardt, South Sydney and Woollahra suggested that before any change occurs there should be the use of techniques such as citizens forums, plebiscites or referendums. Many of the individual submissions also suggested the use of plebiscites or referendums before any restructuring of local government occurs.

Finding

Although the use of referendums and plebiscites was raised it is not considered that they would advance the changes considered necessary for local government in the inner city region. Plebiscites and referendums are inherently conservative and often used to protect the status quo.

Recommendations

Having evaluated the structure of local government in the region I have concluded that there is an opportunity to recast local government structures in the area as building blocks of stronger, more innovative and more democratic governance at this sub-state level. To do as I recommend could produce four beacon councils in this area and constitute a model for advancing reform.

In my view much of the momentum for reform has been lost in the transfer from leadership by the State to a voluntary approach by local government. Experience of the last few years has shown that councils are unable to voluntarily advance the reform process in any substantial way. It is clear to me that a policy of “no forced amalgamations” is used too often as a pretext for inertia and self-interested preservation. It will remain inherently counterproductive to leave local government reform in the hands of councils. Advancing local government reform in the directions envisaged here will be best facilitated by strong partnership between the State Government and the community. The State will need to take the initiative, at least in the initial stages.

Recommendation I

To address the significant issues enunciated in this Inquiry the momentum for local government reform should be reactivated through a strong partnership between the State Government and the community.

This Inquiry has demonstrated that communities of interest centre on suburbs. It is essential to provide structures that promote new, innovative approaches to local governance at that level. Suburbs can become the laboratories of concrete, innovative action and experimentation.

Recommendation 2

That the prominence of the suburb be recognised both for its expression of community identity and its potential as a unit for local democracy and place management. Any changes to local government in this region must strengthen the integrity of the suburbs.

Recommendation 3

That council strategic and management plans identify specific provision for service delivery and governance in the suburbs within its jurisdiction.

At the end of this Inquiry I have come to the firm judgement that local government structures in the area should be recast to provide fewer, better resourced, more strategically focussed councils. The very few voluntary attempts to date in NSW have involved simplistic amalgamations of two or more adjoining councils. But as this Inquiry has shown restructuring must be substantially broader than simply achieving scale. It has also highlighted the imperative of more strategically focused attention to the characteristics and aspirations of suburbs at one level and region at another level. A voluntary approach has proven to be not sophisticated enough to achieve this scale and scope of reform. Recasting is needed.

In reaching this conclusion I have been conscious of the much quoted “no forced amalgamations” policy. I have already made the point that this is too often used to avoid confronting essential changes that should be made for the wellbeing of communities. Equally, a significant weakness in such a wholesale policy is its exploitation as a “one size fits all” blanket covering every situation. Such a policy should not be allowed to bind the State Government from ever implementing changes needed for the benefit of citizens. By selecting this region as the subject of Inquiry the State Government has rightly differentiated it from local government in general and demonstrated the strategic approach needed to achieve reform. This region is not typical of other regions of the state, the Inquiry has demonstrated unique characteristics and aspirations that are different and merit special considerations. It is my strong conclusion that the time has come that this policy should be reviewed. At least it should be set-aside in this case.

Recommendation 4

That the structure of local government in this region be recast by creation of four new councils

- **Council No.1 - An enhanced City of Sydney**
- **Council No.2 - A mixed residential/industrial city**
- **Council No. 3 - A beachside/harbourside residential city**
- **Council No. 4 - An Inner West residential gateway city**

Recommendation 5

Managing the change from eight to four councils could be achieved by:

- **Adopting the boundaries as delineated**
- **Existing councils continuing to operate during transition period**
- **Appointing an independent task force (three members plus departmental support) to set up structures and employ new general managers**
- **Work with new general managers to reallocate assets, establish staff structures and appoint staff to new councils.**
- **Holding elections for new councils as soon as possible**

Central to the findings and recommendations of this Inquiry is the need for structures to drive more multi-layered governance in the region, councils and suburbs. Regional Forums of Mayors operate in many regions as mechanisms for the political leadership needed. They are different from ROCs and I see little prospect that the ROCs could evolve into this role. These are forums of the local government political leaders, the mayors, meeting in concert.

Recommendation 6

That the Department of Local Government examines appropriate mechanisms—including a Regional Forum of Mayors - for inter-governmental relationships at both the local and State level, regional leadership, strategic planning, and delivery of region-wide services.

Despite the entreaties to recommend that rate pegging be abandoned, based on the investigations undertaken by the Inquiry team I find no reason to do so.

Recommendation 7

That rate pegging be maintained but that:

- **The formula for determining the level of pegging be reviewed in line with the Independent Pricing Tribunal's recommendations**
- **Consideration be given to extending the criteria for general rate pegging**
- **The degree of rate pegging to be applied to the ensuing year be made available to councils prior to formulation of their draft management plans.**

A number of issues have been raised in this Inquiry both at the macro and micro levels that have not been specifically dealt with in the recommendations. Examples of specific issues raised include:

- the role of elected representatives;

- infrastructure provision and maintenance;
- long term financial planning;
- effective elected bodies (eg number of councillors; wards; popularly elected mayors);
- the need for restructuring local government in other parts of the State.

Consistent with Recommendation 1 the Department of Local Government should devise and implement a program of ongoing reform.

Recommendation 8

That the Department of Local Government formulate and communicate to the community a program of ongoing reform which will be pursued in a consultative and transparent manner.

Alternatives to Recommendation 4

I stress that a full recasting of councils (Recommendation 4) is my preferred option. If this is not acceptable because of the current policy, the following boundary adjustments could be initiated. I regard these adjustments as a minimalist approach.

Sydney CBD

A minimal expansion to the east could include Darlinghurst/Kings Cross, Woolloomooloo, Potts Point, Rushcutters Bay, and Elizabeth Bay. This is in effect that part of South Sydney City north of Campbell, Flinders and Oxford Streets. Expansion to the west could include Glebe and Forest Lodge.

Bondi Junction

On balance I have come down on the side of a boundary adjustment such that Bondi Junction would fall entirely within Waverley Council.

Port Botany and Sydney Airport

The boundaries between Randwick and Botany Bay councils should be adjusted such that all of Port Botany would be within Randwick City Council.

The boundaries between Botany Bay, Rockdale and Marrickville Councils should be examined in consultation with the Sydney Airport Corporation to determine the extent and location of any boundary adjustments.

Appendix 2

New South Wales Government Gazette No. 184

Official Notices – 30 November 2001

- Market Operations Rule (NSW Rules for Electricity Metering) No. 3 of 2001;
 - Market Operations (NSW Transfer Rules for Retail Electricity Supply) Rule No. 4 of 2001;
- under section 63C of the Electricity Supply Act 1995.

The Market Operations Rules take effect on the date specified in the Rules.

Copies of the Market Operations Rules are available on the following Government Website: www.treasury.nsw.gov.au.

KIM YEADON, M. P.,
Minister for Energy

FORESTRY ACT 1916

PROCLAMATION

(L.S.) MARIE BASHIR, Governor

I, Professor MARIE BASHIR, AC, Governor of the State of New South Wales, in pursuance of the provisions of the Forestry Act 1916, and with the advice of the Executive Council, do, by this my Proclamation, declare that the land described in the Schedule hereto is dedicated as a State Forest.

Eastern Division

*Land District of Bathurst;
Evans Shire Council Area;
Macquarie Forestry Region.*

Mount David State Forest No 058, No. 6 Extension. An area of about 61.99 hectares in the Parish of Mount Lawson, County of Georgiana being the land within Lot 9 in Deposited Plan 1016320 Portion 211 delineated on plan catalogued 1918-1506 in the Department of Information Technology and Management, Sydney, EXCLUSIVE OF the reserved road 20.115 metres wide traversing Lot 9 aforesaid. (6317).

Signed and sealed at Sydney, this 14th day of November 2001.

By Her Excellency's Command,

KIM YEADON, M. P.,
Minister for Forestry

GOD SAVE THE QUEEN!

LIQUOR ACT 1982

Part 11-Division 4

ORDER

PURSUANT to section OOA of the Liquor Act 1982, I, JACK RICHARD FACE, Minister for Gaming and Racing, do hereby declare 1 December 2001 as the operative date for the purposes of Division 4 of Part 11 of the Liquor Act 1982.

Dated this 7th day of November 2001.

J. RICHARD FACE, M. P.,
Minister for Gaming and Racing

LOCAL GOVERNMENT ACT 1993

ORDER

I, HARRY WOODS, M. P., Minister for Local Government, pursuant to section 293 of the Local Government Act 1993, hereby appoint Saturday, 16 February 2002, for the holding of a by-election to fill a casual vacancy in the office of councillor of Goulburn City Council.

Dated: 28 November 2001.

HARRY WOODS, M. P.,
Minister for Local Government

LOCAL GOVERNMENT ACT 1993

ORDER

I, HARRY WOODS, M. P., Minister for Local Government, pursuant to section 293 of the Local Government Act 1993, hereby appoint Saturday, 16 February 2002, for the holding of a by-election to fill a casual vacancy in the office of councillor of Tallaganda Shire Council.

Dated: 28 November 2001.

HARRY WOODS, M. P.,
Minister for Local Government

LOCAL GOVERNMENT ACT 1993

ORDER

Referral of Boundary Alteration Proposal to the Local Government Boundaries Commission

I, HARRY WOODS, Minister for Local Government, acting under sections 218E (1) and 218F (1) of the Local Government Act 1993, hereby order the referral of my boundary alteration proposal to transfer the portion of Bondi Junction currently within Woollahra local government area to the Waverley local government area to the Local Government Boundaries Commission.

The area proposed to be transferred from Woollahra local government area to the Waverley local government area commences at the juncture of Syd Einfield Drive and Oxford Street, Bondi Junction, at Ocean Street, Woollahra, thence bounded by Syd Einfield Drive easterly to the point of intersection with Oxford Street and Bondi Road, Bondi Junction, thence bounded by Oxford Street, Bondi Junction, westerly to the point of commencement.

I request the Local Government Boundaries Commission to examine and report on the proposal in accordance with the Act, having regard to the following factors as required by section 263 (3):

- (a) the financial advantages or disadvantages (including the economies or diseconomies of scale) of any relevant proposal to the residents and ratepayers of the areas concerned,
- (b) the community of interest and geographic cohesion in the existing areas and in any proposed new area.
- (b) the existing historical and traditional values in the existing areas and the impact of change on them.
- (d) the attitude of the residents and ratepayers of the areas concerned.
- (e) the requirements of the area concerned in relation to elected representation for residents and ratepayers at the local level, the desirable and appropriate relationship between elected representatives and ratepayers and residents and such other matters as it considers relevant in relation to the past and future patterns of elected representation for that area,
- (e1) the impact of any relevant proposal on the ability of the councils of the areas concerned to provide adequate, equitable and appropriate services and facilities.
- (e2) the impact of any relevant proposal on the employment of the staff by the councils of the areas concerned,
- (e3) the impact of any relevant proposal on rural communities in the areas concerned,
- (e4) in the case of a proposal for the amalgamation of two or more areas, the desirability (or otherwise) of dividing the resulting area or areas into wards.
- (e5) in the case of a proposal for the amalgamation of two or more areas, the need to ensure that the opinions of each of the diverse communities of the resulting area or areas are effectively represented,
- (f) such other factors as it considers relevant to the provision of efficient and effective local government in the existing and proposed new areas.

The Local Government boundaries Commission may not hold an inquiry on this proposal.

Dated: 20 November 2001.

HARRY WOODS, M. P.,
Minister for Local Government

LOCAL GOVERNMENT ACT 1993

ORDER

Referral of Boundary Alteration Proposal to the Local Government Boundaries Commission

I, HARRY WOODS, Minister for Local Government, acting under sections 218E (1) and 218F (1) of the Local Government Act 1993, hereby order the referral of my boundary alteration proposal to transfer the suburbs of Woolloomooloo, Potts Point, Rushcutters Bay, Elizabeth Bay and part of Darlinghurst in the South Sydney local government area to the Local Government Boundaries Commission.

- The area proposed to be transferred commences at the boundary of the Sydney and South Sydney local government areas at the intersection of Riley Street and Campbell Street, Darlinghurst;
- thence prolonging generally north and north-east along the South Sydney local government boundary as last described to the Elizabeth Bay foreshore;
- recommencing at the Sydney and Woollahra local government boundary at the Rushcutters Bay Park Canal and generally prolonging along that boundary as last described to the intersection of Barcom Street and Oxford Street; thence north-west along Oxford Street to the intersection with Flinders Street;
- thence generally south on that street to the intersection with Campbell Street;
- thence east along Campbell Street to commencement.

I request the Local Government Boundaries Commission to examine and report the proposal in accordance with the Act, having regard to the following factors as required by section 263 (3):

- (a) the financial advantages or disadvantages (including the economies or diseconomies of scale) of any relevant proposal to the residents and ratepayers of the areas concerned.
- (b) the community of interest and geographic cohesion in the existing areas and in any proposed new area,
- (c) the existing historical and traditional values in the existing areas and the impact of change on them,
- (d) the attitude of the residents and ratepayers of the areas concerned,
- (e) the requirements of the area concerned in relation to elected representation for residents and ratepayers at the local level, the desirable and appropriate relationship between elected representative and ratepayers and residents and such other matters as it considers relevant in relation to the past and future patterns of elected representation for that area,

- (e1) the impact of any relevant proposal on the ability of the councils of the areas concerned to provide adequate, equitable and appropriate services and facilities,
- (e2) the impact of any relevant proposal on the employment of the staff by the councils of the areas concerned,
- (e3) the impact of any relevant proposal on rural communities in the areas concerned,
- (e4) in the case of a proposal for the amalgamation of two or more areas, the desirability (or otherwise) of dividing the resulting area or areas into two wards,
- (e5) in the case of a proposal for amalgamation of two or more areas, the need to ensure that the opinions of each of the diverse communities of the resulting area or areas are effectively represented,
- (f) such other factors it considers relevant to the provision of efficient and effective local government in the existing and proposed new areas.

The Local Government boundaries Commission may not hold an inquiry on this proposal.

Dated: 20 November 2001.

HARRY WOODS, M. P. .
Minister for Local Government

LOCAL GOVERNMENT ACT 1993

ORDER

Referral of Boundary Alteration proposal to the Local Government Boundaries Commission

I, HARRY WOODS, Minister for Local Government, acting under sections 218E (1) and 218F (1) of the Local Government Act 1993, hereby order the referral of my boundary alteration proposal to transfer that portion of the suburbs of Chippendale, Camperdown, Ultimo and the suburbs of Forest Lodge and Glebe currently within Leichhardt local government area and South Sydney local government area to Sydney local government area to the Local Government Boundaries Commission.

- The area proposed to be transferred from Leichhardt and South Sydney local government areas to Sydney local government area commences at the boundary of the Sydney and South Sydney local government areas at the intersection of Cleveland Street and Regent Street;
- thence proceeding generally west to the intersection of City Road;
- thence proceeding generally south-west along City Road to the intersection with Carillon Avenue;
- thence west along Carillon Avenue to the intersection with

Mallett Street;

- thence generally north-west along Mallett Street to the intersection of Pyrmont Bridge Road, then continuing north-west along Booth Street to the intersection of Wigram Road;
- thence north-east along Wigram Road to the commencement of the stormwater channel along Johnstons Creek;
- thence following the Johnstons Creek Stormwater Channel north to its crossing with The Crescent;
- thence north along The Crescent to the intersection of Chapman Road, then east along Chapman Road to the boundary with Bicentennial Park and Federal Park;
- thence north east along that boundary to the foreshore of Rozelle Bay;
- recommencing at the boundary of Sydney and Leichhardt local government areas at the foreshore of Blackwattle Bay at the junction of Wattle Street and Pyrmont Bridge Road;
- thence proceeding along that boundary as last described to commencement.

I request the Local Government Boundaries Commission to examine and report on the proposal in accordance with the Act, having regard to the following factors as required by section 263 (3);

- (a) the financial advantages or disadvantages (including the economies or diseconomies of scale) of any relevant proposal to the residents and ratepayers of the areas concerned,
- (b) the community of interest and geographic cohesion in the existing areas and in any proposed new area,
- (c) the existing historical and traditional values in the existing areas and the impact of change on them,
- (d) the attitude of the residents and ratepayers of the areas concerned,
- (e) the requirements of the area concerned in relation to elected representation for residents and ratepayers at the local level, the desirable and appropriate relationship between elected representatives and ratepayers and residents and such other matters as it considers relevant in relation to the past and future patterns of elected representation for that area,
- (e1) the impact of any relevant proposal on the ability of the councils of the areas concerned to provide adequate, equitable and appropriate services and facilities,
- (e2) the impact of any relevant proposal on the employment of the staff by the councils of the areas concerned,
- (e3) the impact of any relevant proposal on rural communities in the areas concerned,

(e4) in the case of a proposal for the amalgamation of two or more areas, the desirability (or otherwise) of dividing the resulting area or areas into wards,

(e5) in the case of a proposal for the amalgamation of two or more areas, the need to ensure that the opinions of each of the diverse communities of the resulting area or areas are effectively represented.

(f) such other factors as it considers relevant to the provision of efficient and effective local government in the existing and proposed new areas.

The Local Government Boundaries Commission may not hold an inquiry on this proposal.

Dated: 20 November 2001.

HARRY WOODS, M. P. ,
Minister for Local Government

LOCAL GOVERNMENT ACT 1993

PROCLAMATION

(L.S.) M. BASHIR, Governor

I, Professor , MARIE BASHIR, A.C., Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 218B of the Local Government Act 1993, do hereby alter the boundaries of the City of Gosford as described by Proclamation as the Shire of Gosford in Government Gazette No. 171 of 8 December 1978 (and reconstituted and proclaimed as a city by Proclamation in Government Gazette No. 150 of 9 November 1979) and the Area of Wyong as described by Proclamation in Government Gazette No. 120 of 10 October 1969, both continued and taken to be constituted under the Local Government Act 1993 by Clause 21 of Schedule 7 to that Act, by taking the part of the City of Gosford described in Schedule "A" hereto and adding it to the Area of Wyong so that the boundaries of the City of Gosford and the Area of Wyong shall be as respectively described in Schedules "B" and "C" hereto - (FF01/0091).

Signed and sealed at Sydney, this 21st day of November 2001.

By Her Excellency's Command.
HARRY WOODS (SGD)

Harry Woods,
Minister for Local Government

Appendix 3

Previous Publications

Previous Publications

Item	Title	Date
Discussion Paper 1	Public Sector Tendering & Contracting in New South Wales: A Survey	May 1989
Report 1	Public Sector Tendering & Contracting in New South Wales: Supply of Goods and Services	August 1989
Report 2	Public Sector Tendering & Contracting in New South Wales: Local Government Tendering & Contracting	October 1989
Discussion Paper 2	Coastal Development in New South Wales: Public Concerns & Government Processes	November 1989
Discussion Paper 3	Public Sector Tendering & Contracting in New South Wales: Capital Works Tendering & Contracting: Management Options	June 1990
Report 3	Public Sector Tendering & Contracting in New South Wales: Capital Works Tendering & Contracting. Volume A	April 1991
Report 4	Coastal Planning & Management in New South Wales: A Framework for the Future. Volume 1	September 1991
Supplement to 4	An Alternative Dispute Resolution Primer	September 1991
Report 5	Public Sector Tendering & Contracting in New South Wales: Capital Works Tendering & Contracting. Volume B	December 1991
Report 6	Payroll Tax Concessions for Country Industries. Volume I	December 1991
Report 7	Public Sector Tendering & Contracting in New South Wales: Supply of Goods and Services: Follow Up Report	June 1992
Report 8	Coastal Planning & Management in New South Wales: The Process for the Future. Volume II	October 1992
Report 9	Public Sector Tendering & Contracting in New South Wales: Local Government Tendering & Contracting: Follow Up Report	April 1993
Discussion Paper 4	Regional Business Development in New South Wales: Trends, Policies and Issues.	August 1993
Report 10	Regional Business Development in New South Wales: Achieving Sustainable Growth: Principles for Setting Policy. Volume I	May 1994
Report 11	Regional Business Development in New South Wales: Achieving Sustainable Growth: Initiatives for Setting Policy. Volume II	November 1994

Report 12	Rationales for Closing the Veterinary Laboratories At Armidale and Wagga Wagga and the Rydalmere Biological and Chemical Research Institute	August 1996
Report 13	Factors Influencing the Relocation of Regional Headquarters of Australian and Overseas Corporations to New South Wales	October 1996
Report 14	Interim Report on the Fisheries Management Amendment (Advisory Bodies) Act 1996	April 1997
Report 15	Waste Minimisation and Management	April 1997
Report 16	The Fisheries Management Amendment (Advisory Bodies) Act 1996	July 1997
Discussion Paper 5	Future Employment and Business Opportunities in the Hunter Region	October 1997
Report 17	Fisheries Management and Resource Allocation in New South Wales	November 1997
Report 18	Operations of the Sydney Market Authority (Dissolution) Bill from Commencement until 31 December 1997	March 1998
Discussion Paper 6	International Competitiveness of Agriculture in New South Wales	May 1998
Report 19	Future Employment and Business Opportunities in the Hunter Region; and The Downsizing of the Rack Rite Investment Proposal	July 1998
Report 20	Interim Report on the Provision and Operation of Rural and Regional Air Services in New South Wales	September 1998
Report 21A	The Use and Management of Pesticides in New South Wales Vol 1	September 1999
Report 21B	The Use and Management of Pesticides in New South Wales Vol 2: Transcripts of Evidence	September 1999
Report 22	Inquiry into Road Maintenance and Competitive Road Maintenance Tendering	November 2000
Report 23	Merger of country energy distributors	May 2001
Report 24	Genetically Modified Foods: Interim Report	June 2001
Report 25	Redevelopment and Remediation of the Rhodes Peninsula	June 2002
Report 26	European and United Kingdom perspectives on agriculture, genetically modified food and rural development	September 2002

