

NSROC Submission to Local Government Acts Taskforce

Thank you for the opportunity to comment on the Local Government Acts Taskforce Discussion Paper, “A new Local Government Act for NSW “.

NSROC is broadly supportive of the Taskforce’s proposal to develop flexible, principles - based legislative framework where possible that avoids excessive prescription, is written in plain language and in logical form. In particular, the proposed elevation of Integrated Planning and Reporting (IP&R) to form a central plank of the new Act is strongly supported, sensible and will serve to further reinforce the IP&R processes within local government for the longer term benefit of local communities.

This submission utilises the Summary of relevant Taskforce Proposals included in the Discussion Paper to clearly identify those proposals of the Taskforce that NSROC fully supports , those it supports in principle with an explanation as to reason/s and those , small in number , that it does not support.

It is noted that the Taskforce’s work has been impacted by the fact that a number of other relevant Reviews are still to be finalised, in particular the Independent Local Government Review Panel’s work, and thus a number of areas have not yet been addressed by the Taskforce. We look forward to the opportunity to comment further once the Taskforce has addressed those areas not detailed in the Discussion Paper.

Local Government Acts' Taskforce Proposal	NSROC Response
Approach and Principles for the Development of the New Act	
<p>The Taskforce proposes:-</p> <ul style="list-style-type: none"> i) A flexible, principles based legislative framework, avoiding excessive prescription, written in plain language and in a logical form. The new Act should be confined to setting out the principles of how councils are established and operate. When further detail or explanation is required as to how these principles are to be achieved then regulations, codes and guidelines will be used where appropriate. ii) a more consistent approach be taken to the use and naming of the regulatory and other instruments, noting that there is inconsistent use of mandatory and discretionary codes, section 23A guidelines, practice notes, 	<p>NSROC supports the proposed framework for the construction of a new Act.</p>
Purposes of the Local Government Act	
<ul style="list-style-type: none"> i) The Taskforce proposes the following draft Purposes of the Act:- <i>"the purpose of this Act is to provide</i> <ul style="list-style-type: none"> (1) <i>a legal framework for the NSW system of local government in accordance with section 51 of the Constitution Act 1902 (NSW)</i> (2) <i>the nature and extent of the responsibilities and powers of local government</i> (3) <i>a system of local government that is accountable, effective, efficient and sustainable."</i> 	<p>Supported</p> <p>Supported</p> <p>Supported.</p>
Role and Principles of Local Government	

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<p>i) the Taskforce proposes the inclusion of a new Role of Local Government and a set of Principles for Local Government that will replace the charter in the new Act as follows:-</p> <p>“Role of Local Government</p> <p><i>The role of local government is to lead local communities to achieve social, economic and environmental wellbeing through:-</i></p> <p>i) <i>utilising integrated strategic planning</i></p> <p>ii) <i>working in partnership with the community, other councils, State and Commonwealth governments to achieve outcomes based on community priority as established through Integrated Planning and Reporting</i></p>	<p>Supported, however, a sentence clarifying where this section sits with regard to statutory interpretation would be helpful.</p> <p>This introductory sentence could be improved by the addition of the word “sustainable “ before the word “ social” .</p>

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<p>(iii) <i>providing and procuring effective, efficient, and economic infrastructure services</i></p> <p>(iv) <i>exercising democratic local leadership and inclusive decision-making.”</i></p>	
Principles of Local Government	
<p>Principles to be observed by local government are to:-</p> <p>i) provide community-based representative democracy with open, unbiased and accountable government</p> <p>ii) engage with and respond to the needs and interests of individuals and diverse community groups</p> <p>iii) facilitate sustainable, responsible management, development, protection and conservation of the natural and built environment;</p> <p>iv) diligently address risk and long-term sustainability;</p> <p>v) achieve and maintain best practice public governance and administration, and to act fairly, responsibly, ethically, and in the public interest, and</p> <p>vi) optimise technology, and foster innovation and flexibility.”</p>	<p>Supported.</p> <p>Supported.</p> <p>Supported.</p> <p>Supported.</p> <p>Supported, could be strengthened by an explicit statement of adherence to social justice principles of equity, access, participation and rights which are important to the IPR process.</p> <p>Supported</p>
Integrated Planning and Reporting	

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<p>The Taskforce proposes that:-</p> <ul style="list-style-type: none"> (i) IPR be elevated to form a central 'plank' of the new Act as the primary strategic tool to enable councils to fulfil their leadership role & deliver infrastructure, services & regulation based on community priorities identified by working in partnership with the community, other councils and the State Government. (ii) other provisions of the Act be drafted so as to better support IPR including accountability to the community, financial sustainability and partnership with the State and others to deliver community outcomes. (iii) where possible relevant provisions from other sections of the Act be incorporated into IPR to reduce duplication. For example, capital planning and expenditure approval provisions could be moved to the 	<p>Supported</p> <p>Supported</p> <p>NSROC supports this proposal and suggests the requirement to produce an End of Term Report and State of the Environment Report be reviewed as these reports are a duplication of the reporting requirements of IPR. Similarly, the</p>
<p>IPR resourcing strategy provisions; and community consultation processes should reflect IPR community engagement principles and need not be repeated throughout the Act.</p> <ul style="list-style-type: none"> (iv) The IPR provisions be simplified to increase flexibility for council to deliver IPR in a way that is locally appropriate. 	<p>Requirements of the Annual Report should be simplified to avoid duplication with IPR reporting requirements.</p> <p>Flexibility supported, Most recent guidelines are clear and could be included.</p>
<p>Community Consultation and Engagement</p>	

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<p>The Taskforce proposes the following set of principles to guide councils regarding how consultation and engagement might occur:-</p> <ul style="list-style-type: none"> • commitment to ensuring fairness in the distribution of resources (equity); rights are recognised and promoted (rights); people have fairer access to the economic resources and services essential to meet their basic needs and to improve their quality of life (access); and people have better opportunities to get involved (participation). • ensuring that persons who may be affected by, or have an interest in, a decision or matter should be provided with access to relevant information concerning the purpose of the consultation and the scope of the decision(s) to be taken. • ensuring that interested persons have adequate time and reasonable opportunity to present their view to the council in an appropriate manner and format. 	<p>Proposals supported .Some, further clarity as to meaning around points such as “ fair access to economic resources“ and “ fairness in distribution of resources” would be appreciated.</p>
<ul style="list-style-type: none"> • ensuring that the views presented to the council will be given due consideration. • ensuring that council, in exercising its discretion as to how consultation will proceed in any particular circumstance, has regard to the reasonable expectations of the community, the nature and significance of the decision or matter, and the costs and benefits of the consultation process. • arranging for special consultative procedures in particular instances. 	
Technology	
<p>The Taskforce proposes that:-</p> <ol style="list-style-type: none"> (i) as a general principle the Act should support the optimal and innovative use of technology by councils to promote efficiency and enhance accessibility for the benefit of constituents. (ii) the Act allow each council to determine the most appropriate use of technology taking into account the principles for local government and community engagement through the IPR 	<p>NSROC strongly supports the use of emerging technology to help streamline local government activities.eg Changes to the Act to allow councils to choose to utilise technology to consult with the community in order to reduce advertising costs and to potentially target a wider audience would be beneficial.</p>
Elections	

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<p>The Taskforce proposes:-</p> <ul style="list-style-type: none"> (i) use of postal voting at all council elections as a means of increasing efficiency and voter participation and reducing council election costs. (ii) the following possible improvements to electoral provisions: <ul style="list-style-type: none"> • the most appropriate voting system – Exhaustive preferential; optional preferential; proportional, or first past the post • the option of utilising electronic voting in the future • mechanisms for removing the need for by-elections, when a vacancy occurs either in the first year following an ordinary election or up to 18 months prior to an ordinary election 	<p>Supported.</p> <p>Supported but would appreciate further information and clarification.</p> <p>Supported.</p> <p>Supported.</p>
<ul style="list-style-type: none"> • half term elections for councillors, similar to Senate elections • the ward system being abolished • improving the adequacy of and access to candidate information prior to elections • the enrolment process and maintenance of the non-residential roll, particularly in the City of Sydney 	<p>Not supported. Would place an increased cost on Councils in respect of elections and may impact on the continuity of Council decision making.</p> <p>Not supported. This recommendation is contradictory to the Independent Local Government Review Panel's recommendations regarding Governance .</p> <p>Supported.</p> <p>Supported.</p>
<p>Meetings</p>	

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<p>The Taskforce proposes:-</p> <p>(i) the provisions relating to council meetings be:</p> <ul style="list-style-type: none"> • reviewed, modernised and any unnecessary prescription and red tape removed, • designed to facilitate councils utilising current and emerging technologies in the conduct of meetings and facilitating public access; and • consolidated into a generic mandatory Code of Meeting Practice that may if necessary be supplemented to meet local requirements, provided the amendments are not inconsistent with the provisions of the Act and standard Code of Meeting Practice. 	<p>Supported</p> <p>Supported</p> <p>Supported</p>
Appointment and Management of Staff	
<p>The Taskforce proposes:-</p> <p>(i) the strategic responsibilities of the council be clearly separated from the operational responsibilities of the general manager in determining the council's structure and be aligned with IPR by:</p>	<p>Supported</p>

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<ul style="list-style-type: none"> • the general manager being responsible for determining the organisation structure and for recruiting appropriately qualified staff necessary to fulfil each role within the structure • the council being responsible for determining those services and priorities required and to provide the resources necessary to achieve the Council's Delivery Program, and • the general manager being responsible for the employment of all staff and there be no requirement for the general manager to consult with the council in relation to appointment and dismissal of senior staff. <p>(ii) all positions meeting the criteria as a senior staff position be treated as such, appointed under the prescribed standard contract for senior staff, identified as a senior staff position within the organisation structure, and the remuneration be reported in the council's annual report.</p> <p>(iii) in line with the principle of reducing prescription:</p> <ul style="list-style-type: none"> • each council to determine how it deals with regulatory responsibilities that fall outside of the Local Government Act, rather than prescribe the appointment of a Public Officer, and • the EEO provisions be incorporated with the IPR processes and procedures <p>(iv) the current prescription in the Act relating to the advertising of staff positions and staff appointments be transferred to regulation or to the relevant industrial award.</p>	<p>Supported on the basis that the term "resources" is clarified in the Act. In this regard, it may be clearer if the relevant section requires that council determine the financial resources (but not the human or material resources - which are more appropriately management's responsibility) that should be supplied and apportioned through approval of the budget in order to achieve the Delivery Program. It is recommended that this dot point proposal be amended to read "<i>....provide the financial resources necessary...</i>".</p> <p>NSROC is of the view that consultation with the Council on the appointment of senior staff positions should still continue as required under the current legislation but be further clarified regarding the extent of consultation in order to reinforce the responsibility for such appointments remains with the General Manager.</p> <p>Supported. In respect of the determination of senior staff positions, this should not be solely based on remuneration of the position but should have regard to where the position is placed within the structure of the organisation.</p> <p>Supported</p> <p>Supported</p> <p>Support transfer to regulation but not to a relevant industrial award as these awards are subject to the risk of industrial negotiation every three years. In addition, NSROC proposes the Act should also include the following changes:-</p> <ol style="list-style-type: none"> 1. Section 348 - Amend the requirement that senior staff positions must be advertised at least twice in a newspaper circulated in the 2. State. The new Act should show greater flexibility and allow Councils to advertise online for these positions in line with modern practice.

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	<p>2. Section 351 – Amend the provisions for temporary appointments to 24 months, currently only parental leave vacancies can be temporarily appointed for 24 months and all other temporary vacancies 12 months;</p> <p>3. Section 354F – Currently, the Act states that in the case of an amalgamation or boundary adjustment forced redundancies cannot take place for 3 years. NSROC considers 2 years would be sufficient.</p> <p>4. There should be more flexibility in the Act allowing councils to identify talented staff below senior staff level and the ability to appoint staff to positions without the need for advertisement. This process would promote greater staff loyalty and provide council with value for professional development investment. This practice is common in the private sector.</p> <p>5. NSROC also supports the recommendations made by the LGMA Working Group with the following changes relating to provisions in both the General Manager or Senior staff contracts to support shared service opportunities</p> <p>The standard contract should be changed to enable multiple employing entities to employ a general manager or Senior Staff member with supporting guidelines to assist in facilitating this arrangement.</p>
Pecuniary Interest	
<p>The Taskforce proposes that:-</p> <p>(i) the pecuniary interest provisions be reviewed to ensure they are rewritten in plain language, easily understood and any unnecessary red tape removed.</p> <p>(ii) consideration be given to utilising available technology to assist with the submission and maintenance of pecuniary interest disclosures and to facilitate appropriate access to this information.</p>	<p>NSROC supports this proposal. The Taskforce should though give consideration to the view that non-senior staff be not required to disclose property they have an interest in outside of the LGA. The requirement by staff to disclose conflicts of interest is covered by the Model Code of Conduct.</p> <p>At the very least it would be beneficial if the Act provided a clearer definition of designated persons noting that it is currently applied inconsistently across NSW.</p> <p>Supported.</p>

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Delegations	
<p>The Taskforce proposes that the provisions in the Act relating to delegations be reviewed to ensure they are streamlined; written in plain language; and are reflective of the roles and responsibilities of the council and the general manager to facilitate the efficient, effective and accountable operation of local government.</p>	<p>Supported.</p>
Financial Governance	
<p>The Taskforce proposes:-</p> <ul style="list-style-type: none"> (i) there be greater scope for a focus on principles and the definition of financial systems/minimum standards within a new legislative framework and for assimilation with the mechanisms of IPR in line with frameworks proposed for other parts of the legislation. (ii) there be rebalancing of the regulatory focus of the legislative framework towards systems and risk management rather than process prescription. (iii) to await the Independent Panel work on many of the issues associated with fiscal responsibility including; rating issues; asset and financial planning; rates and charges; management of expenditure; and audit practices before recommending legislative positions on these matters. 	<p>Council supports this proposal on the basis that there is opportunity to make submissions in respect of any significant changes being proposed associated with fiscal management.</p> <p>Supported.</p> <p>Supported. However, it should be noted that the recent TCorp report recommends that future increases in all rates and annual charges should be based on the underlying costs of delivery of these services and annual movement in the cost of these services. It is vital the Act gives adequate provision for such to occur.</p>
Procurement	
<p>The Taskforce proposes:-</p> <ul style="list-style-type: none"> i) the adoption of a more principles-based enabling approach to procurement combined with a medium level of regulation designed to ensure support of the principles of value for money, efficiency and effectiveness, probity and equity, and effective competition. ii) in relation to the current tendering threshold of \$150,000 rather than the legislation setting a dollar value threshold a more flexible principles-based approach be taken to councils setting the threshold based on risk assessment of the proposed procurement. 	<p>Both Supported</p>

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<p>iii) the delegations section of the Act be reviewed to facilitate councils entering into collaborative procurement arrangements such as via ROCs and allowing councils to delegate procurement to general managers with a 'report back' mechanism.</p> <p>iv) any regulation of council procurement support councils utilising available technologies that can assist with efficient, effective and economic procurement processes that are accessible to all relevant stakeholders and are fair, open and transparent.</p>	<p>NSROC strongly supports Taskforce proposals that would enable more efficient and effective regional collaboration.</p> <p>Supported</p>
Capital Expenditure Framework	
<p>The Taskforce proposes:-</p> <p>(i) that a capital expenditure and monitoring framework be developed to enable the appropriate management of risk by councils. This framework should be tailored to risk levels, including significance of the project (including materiality and whole of life costs) and not based on arbitrary monetary thresholds or procurement vehicles.</p>	<p>The current capital expenditure guidelines provide a general overview of the capital expenditure review process but lack detailed explanation of appropriate economic and financial appraisal methodology. Many councils may not have the expertise in house to enable reviews to be completed with confidence and will employ consultants at additional cost. However, Council staff need sufficient knowledge to understand the process so that they can review an external consultant's appraisal in a confident manner.</p> <p>The NSW Treasury Policy and Guidelines Papers are general principles which agencies should apply to their particular situation and develop procedures for undertaking appraisals in their field of operation in consultation with Treasury These principles are based on the utilisation of economic and financial appraisal techniques to ensure the efficient allocation of resources</p>

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	<p>A framework should be developed which is consistent with the Treasury Guidelines and makes it mandatory for all NSW councils to apply a consistent financial methodology to all significant capital projects.</p> <p>It may be appropriate that an independent level of review be obtained either from NSW Treasury, DLG or alternative external organisation that can confirm these financial assessments for high value projects.</p>
Public Private Partnerships	
<p>The Taskforce proposes that PPP projects continue to be subject to regulation and aspects that could be streamlined or simplified be identified and mechanisms for ensuring PPPs be considered for inclusion in the IPR framework.</p>	<p>NSROC supports this proposal, particularly streamlining of the PPP approvals process which can be quite exhaustive and potentially add significantly to the project cost. NSROC would appreciate further detail when available.</p>
Acquisition of Land	
<p>The Taskforce proposes:-</p> <ul style="list-style-type: none"> (i) no change at this time to the acquisition of land provisions as they remain essential to council's continued service and infrastructure deliver, are generally working well and there are no strong reasons to support change. (ii) council plans for the acquisition of land be linked with the IPR processes, and in particular the expressed opinion of the community in the community strategic plan on the need for additional public land or the sale of public land, be included in Delivery Program provisions. 	<p>NSROC believes that change is needed to address the risks associated with VG valuations. Decisions to acquire land should have reference to the 'value for money' principles and proper market value. Most procedures in government require two valuations, as valuations are not scientific (like engineering), but opinion based. In order to make informed decisions about acquisitions, the VG should have to provide a pre-acquisition "appraisal" and/or "valuation", depending on the circumstances, and should be accountable for the advice. The acquiring authority could then make an informed decision as to whether or not to proceed. There should also be a right for council to ask for second opinion of valuation. Currently the VG issues a valuation for compensation. Only the dispossessed owner has the right to object, which protects against an undervaluation. However, there is no protection for the acquiring authority for an over valuation. The only opportunity for the authority is opened up when the dispossessed owner objects, then the authority can seek a different valuation.</p>

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	<p>This incurs a significant cost and proceeding to the Land and Environment Court is costly, risky, time consuming and not socially ideal.</p> <p>Whilst (ii) is supported in principle there is some risk if planned acquisitions (and particularly financials) are identified in the community strategic plan. It potentially precludes free market competitive processes and the opportunity for cost minimisation for Council. It is also noted that opportunities for strategic land acquisition do not always arise in a predictable manner.</p>
Public Land	
<p>The Taskforce proposes:-</p> <p>(i) the current processes for council land management, being complex and inconsistent with the Crown Lands regime, be simplified and complementary.</p> <p>(ii) the Local Government Act:-</p> <ul style="list-style-type: none"> • require councils to strategically manage council-owned public land as assets through the IPR framework • balance reasonable protections for public land use and disposal where the land is identified as having significant value or importance • end the classification regime of public land as either community or operational land and instead, require the council resolution at the time of acquiring or purchasing land to specify the proposed use or uses • provide that a proposed change in the use or disposal of public land, including consultation mechanisms, should be dealt with through the council's asset management planning and delivery program 	<p>NSROC looks forward to a Discussion Paper on public land and offers the following comment in the interim.</p> <p>Supported as long as councils are given greater flexibility in the leasing/licensing of public land for longer than 5 years without approval from the State Government.</p> <p>Supported.</p> <p>Supported.</p> <p>Support the end of the classification regime but not the requirement for council resolution at the time of acquiring land. Instead it is proposed that the resolution occur as part of the IPR process which is in line with central plank of the new Act as proposed by the Taskforce.</p> <p>Supported.</p>

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<ul style="list-style-type: none"> • retain the requirement for a public hearing to be held by an independent person where it is proposed to change the use or dispose of public land identified as having significant value or importance. The results should be reported to and considered by the council before a decision is made and proposals should be addressed through council's community engagement strategy • recognise the LEP zoning processes and restrictions applying to council owned public land • review the prescribed uses to which public land may be applied to accommodate other uses appropriate to the current and future needs of the community. • cease the need for separate plans of management for public land to be prepared and maintained, and in lieu, utilise the asset management planning and delivery program. • cease the need for a separate report to be obtained from the Department of Planning and Infrastructure where proposed leases and licences of public land are referred to the Minister for Local Government for consideration. 	<p>Not supported. This matter is addressed through the community consultation charter for the Local Environmental Plan process and does not require a separately mandated public hearing process.</p> <p>Supported.</p> <p>Supported.</p> <p>Supported.</p> <p>Supported.</p>
Approvals, Orders and Enforcement	
<p>The Taskforce proposes:-</p> <ol style="list-style-type: none"> i) regulatory provisions be reviewed to ensure that the Act provides guidance on regulatory principles but contains flexibility and less prescription in their implementation, with statutory minimum standards or thresholds the council must meet, and council's discretionary 'on-the-ground' functions. ii) within this framework, the prescriptive processes of approvals and orders be streamlined and, subject to risk assessment, be placed into regulations where possible, allowing the Act to focus on high priority areas and principles. iii) certain approvals be repealed or transferred to other legislation, such as the installation of manufactured homes and the operation of caravan parks and camping grounds. Installation of domestic oil and solid fuel heating appliances should be transferred to the Environmental Planning and 	<p>Supported.</p> <p>Supported.</p> <p>Supported.</p>

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<p>Assessment Act; approvals for filming activities on public land be deleted or transferred to other legislation; approvals for amusement devices be transferred to health and safety legislation; and approvals for engaging in activities on public roads be transferred to roads and transport legislation.</p> <p>iv) given that maximum penalties have not increased since 1993, penalties for offences in the Act and Regulation be reviewed to ensure they are proportionate to the seriousness and nature of the offence, and act as a deterrent to re-offending.</p> <p>v) to have regard to the findings and recommendations of the reports by IPART as they affect local government that are due mid-2013.</p> <p>vi) The Taskforce invites comments as to whether there are currently activities requiring approval that are low-risk or redundant and therefore can be removed from the legislation.</p>	<p>Supported.</p> <p>Supported.</p> <p>Supported.</p>
Performance of Local Government	
<p>The Taskforce will await the report and recommendations of the Independent Panel before considering any legislative provisions but invites submissions on whether the performance of local government and its constituent entities should be further monitored and reported.</p>	<p>Supported.</p>