



## **LOCAL GOVERNMENT ACTS TASKFORCE**

**Report to the Minister for Local Government  
the Hon Don Page MP**

# **A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988**

16 October 2013



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## TABLE OF CONTENTS

<b>LIST OF ABBREVIATIONS &amp; DEFINED TERMS</b>	<b>4</b>
<b>LIST OF TABLES</b>	<b>5</b>
<b>CHAPTER 1 – INTRODUCTION</b>	<b>6</b>
<b>Foreword by the Chair of the Local Government Acts Taskforce</b>	<b>6</b>
1.1 Local Government Acts Taskforce - Terms of Reference	8
1.2 Members of the Local Government Acts Taskforce	9
1.3 Executive Summary	9
1.4 Recommendations by the Taskforce	11
<b>CHAPTER 2 – APPROACH &amp; CONSULTATION</b>	<b>19</b>
2.1 Approach to the Review	19
2.2 Limitations of Scope	19
2.3 Consultation	21
2.4 Feedback from Workshops and Written Submissions – Round II	22
<b>CHAPTER 3 - ELEMENTS OF A NEW LOCAL GOVERNMENT ACT</b>	<b>24</b>
<b>Part I – Guiding principles for a new Local Government Act</b>	<b>24</b>
3.0.0 Approach and Principles for the Development of the New Act	24
3.1.0 Structure and Elements of the New Local Government Act	25
3.1.1 Purposes of the Local Government Act	25
3.1.2 Role and Guiding Principles of Local Government	26
3.1.3 Constitution of Councils	27
3.1.4 Roles and Responsibilities of Council Officials	27
<b>Part II–Strategic Framework for Local Government in NSW</b>	<b>28</b>
3.2.1 Integrated Planning and Reporting	28
3.2.2 Community Engagement	32
3.2.3 Performance of Local Government	33
3.2.4 Technology	33
<b>Part III – Council Operations</b>	<b>34</b>
3.3.1 Elections	34
3.3.2 Meetings	35
3.3.3 Appointment and Management of Staff	36
3.3.4 Regional Strategic Organisations of Councils and Formation and Involvement in Corporations	37
3.3.5 Protection from Liability	38
3.3.6 Code of Conduct	39
3.3.7 Pecuniary Interest	39
3.3.8 Delegations	39
3.3.9 Financial Governance	40
3.3.10 Procurement	41
3.3.11 Capital Expenditure Framework	43
3.3.12 Public Private Partnerships	44
3.3.13 Acquisition of Land	44
3.3.14 Public Land	45
3.3.15 Approvals, Orders and Enforcement	46
3.3.16 Water Management	48
3.3.17 Tribunals and Commissions	49
3.3.18 Other Matters	49
<b>CHAPTER 4 – REVIEW OF THE CITY OF SYDNEY ACT</b>	<b>51</b>
<b>REFERENCES</b>	<b>55</b>

## List of Abbreviations & Defined Terms

<b>“Act”</b>	means the <i>Local Government Act 1993</i>
<b>“ASIC”</b>	means the Australian Securities and Investments Commission
<b>“Charter”</b>	means the Council Charter as articulated in Section 8 of the Local Government Act
<b>“Community Engagement Strategy Guidelines”</b>	means the guidelines recommended by the Taskforce to be prepared by councils that will provide communities with opportunity to engage with the council. See recommendation 3.2.2
<b>“Community Strategic Plan”</b>	means the plan required by Section 402 of the Local Government Act that identifies the main priorities and aspiration for the future of the local government area covering a period of at least 10 years
<b>“CoSA”</b>	means the <i>City of Sydney Act 1988</i>
<b>“Delivery Plan”</b>	means the program required by section 404 of the Local Government Act detailing the principal activities to be undertaken by the council to implement the strategies established by the community strategic plan
<b>“Discussion Paper”</b>	means the Local Government Acts Taskforce paper “A New Local Government Act for NSW” released in April 2013
<b>“EPAA”</b>	means the <i>Environmental Planning and Assessment Act 1979</i>
<b>“FA”</b>	means the <i>Food Act 2003</i>
<b>“Guiding Principles”</b>	means the principles recommended by the Taskforce to be observed by local government in the exercise of its role and responsibilities. The Guiding Principles are listed in recommendation 3.1.2
<b>“IAP2”</b>	means the International Association of Public Participation which has developed a model of public participation
<b>“Independent Panel”</b>	means the Independent Local Government Review Panel
<b>“IPART”</b>	means the Independent Pricing and Regulatory Tribunal
<b>“IPR”</b>	means integrated planning and reporting
<b>“JSCEM”</b>	means the Joint Standing Committee on Electoral Matters of the NSW Parliament
<b>“LA(JTC)A”</b>	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i>
<b>“LAP”</b>	means Local Approvals Policy
<b>“LEP”</b>	means Local Environmental Plan
<b>“LGPR Committee”</b>	means the Local Government Project Review Committee constituted under section 400G of the Act
<b>“LOP”</b>	means Local Orders Policy
<b>“PEEA”</b>	means the <i>Parliamentary Electorates and Elections Act 1912</i>
<b>“PHA”</b>	means the <i>Public Health Act 2010</i>
<b>“POEOA”</b>	means the <i>Protection of the Environment Operations Act 1997</i>
<b>“PPP”</b>	means Public Private Partnerships
<b>“RA”</b>	means the <i>Roads Act 1993</i>
<b>“Resourcing Strategy”</b>	means the strategy required by Section 403 of the Local Government Act for provision of the resources required to implement the strategies established by the community strategic plan that the council is responsible for. It includes long-term financial planning, workforce management planning and asset management planning
<b>“ROC”</b>	means Regional Organisation of Councils
<b>“SOA”</b>	means the <i>Summary Offences Act 1988</i>
<b>“Taskforce”</b>	means the Local Government Acts Taskforce
<b>“WMA”</b>	means the <i>Water Management Act 2000</i>

## List of Tables

<b>Table 1</b>	Terms of Reference for the Local Government Act 1993 and the City of Sydney Act 1988 Taskforce	Page 8
<b>Table 2</b>	Summary of Taskforce Recommendations	Page 11
<b>Table 3</b>	Reviews currently being conducted with relevance to the review of the Local Government Act and the City of Sydney Act	Page 20
<b>Table 4</b>	Submissions by stakeholders to Discussion Paper	Page 21
<b>Table 5</b>	Summary of key themes arising from feedback received in response to the Taskforce Discussion Paper “A New Local Government Act for NSW”	Page 22
<b>Table 6</b>	Taskforce recommended outline for the overall structure of the new Act	Page 31

## Chapter 1—Introduction

### Foreword by the Chair of the Local Government Acts Taskforce

As Chair of the Local Government Acts Taskforce (the Taskforce) it is my pleasure to present to the Minister for Local Government, the Hon Don Page MP the Taskforce recommendations and findings for a new Local Government Act for NSW. These have been developed in collaboration with the other Taskforce Members Mr Stephen Blackadder, Mrs Gabrielle Kibble AO and Dr Ian Tiley.

In the formulation of these recommendations the Taskforce consulted widely, holding workshops, meeting with individual stakeholders and special interest groups, as well as inviting written submissions in response to the Taskforce's two papers: the "*Preliminary Ideas*" paper released in 2012 and the Discussion Paper "*A New Local Government Act for NSW*" released in 2013.

The Taskforce is very appreciative of the ideas and constructive suggestions that we received from a wide range of interested persons and stakeholders. The Taskforce was gratified by the wide support for the proposals we made in our Discussion Paper.

The Taskforce has considered the feedback and trusts that the final recommendations contained in this report reflect the needs of local government and the community, and will support a robust and sustainable local government sector for NSW into the future.

We have endeavoured to formulate recommendations for an enabling, principles-based Local Government Act (the Act) that simplifies the regulatory aspects of the legislation. It is important to note that there is considerable support for the Act and rather than a total rewrite it is more in need of refocus, re-emphasis and simplification.

In particular, it is evident that there is widespread support for the integrated planning and reporting (IPR) framework. Reflecting this, the key recommendation of the Taskforce is the restructure of the new Act around this framework

(see recommendation 3.2.1). The Taskforce emphasises that the recommendation for strengthening IPR does not imply expanding the detail or level of prescription.

By giving IPR more prominence in the Act and redrafting and/or incorporating other sections of the Act into the IPR framework the Taskforce believes that it is possible to develop a streamlined Act that eliminates unnecessary red tape and duplication. More importantly, the IPR framework will support more autonomy for councils which engage effectively with their communities to deliver outcomes that the community has identified as essential for its wellbeing and long-term sustainability.

It was also evident that there is the sincere desire of local government to work more collaboratively and strategically with the State Government and to ensure that local, regional and State strategic plans are more closely aligned. The Taskforce observed considerable support for the Inter-Governmental Agreement and has the view that it is important this Agreement is a permanent arrangement.

A number of other important reviews relevant to local government are being conducted concurrently, including the work of the Independent Local Government Review Panel and a review of the planning system in NSW. At the time of making this report none of these reviews have been finalised. This has impacted the work of the Taskforce as there are a number of sections of the Act the Taskforce has been unable to consider pending the outcome of the other reviews. These are noted in the report, together with a recommendation that they are reviewed in the future.

The Taskforce also reviewed the City of Sydney Act and has concluded that its current provisions are working well with the exception of the non-residential electoral arrangements for Sydney City Council.

The Taskforce also recommends that a review of any new Act is undertaken after 5 years of operation to ensure that its policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives.

In undertaking subsequent reviews the Taskforce urges the State Government and local government to resist the temptation to amend any new Act to become more prescriptive, as has happened to the Act. The Taskforce asks local government to think carefully before requesting more regulation as a mechanism of resolving problems.

I would like to acknowledge and thank the officers of the Division of Local Government, particularly Mr Paul Chapman and Ms Tempe Lees, for the hard and diligent work and assistance they have provided to the Taskforce.

The Taskforce hopes our recommendations will result in an enduring Act that will meet the needs of local government into the future and I commend this report to the Minister for Local Government.

**John Turner**

Chair  
Local Government Acts Taskforce

16 October 2013

## 1.1 Local Government Acts Taskforce - Terms of Reference

**Table 1 - Terms of Reference for the *Local Government Act 1993* and the *City of Sydney Act 1988* Taskforce**

The Local Government Acts Taskforce will consider the provisions of the *Local Government Act 1993* and the *City of Sydney Act 1988*, and their practical operation so as to:

- Ensure that the legislation and statutory framework meet the current and future needs of the community, local government, and the local government sector.
- Strengthen and streamline the legislation to enable local government to deliver services and infrastructure efficiently, effectively and in a timely manner.
- Ensure that the legislation is progressive, easily understood and provides a comprehensive framework, while avoiding unnecessary red tape.
- Recognise the diversity of local government in NSW.
- Provide greater clarity on the role and responsibility of local government.
- Adopt the decisions of the Government in relation to the recommendations of the Independent Local Government Review Panel.
- Make recommendations to the Minister for Local Government for legislative changes considered necessary and appropriate for a new Local Government Act.
- Identify and recommend to the Minister for Local Government, at any time during the review process, any legislative changes that need to be implemented prior to the completion of the review.

### **Other considerations:**

In carrying out its work the Taskforce will:

- Engage and consult with the wider NSW community and with local government stakeholders (including the Local Government and Shires Associations of NSW, Local Government Managers Australia (NSW), local councils, village committees, county councils, regional organisations of councils, business, community, industrial and employee associations, relevant professional bodies, and government agencies) about the operation of the legislation.
- Identify key principles to underpin local government legislation in NSW. In developing these principles the Taskforce will consider legislation and its application in other jurisdictions both in Australia and overseas.
- Take account of the work, findings and government decisions, in relation to the NSW Planning System Review, the Destination 2036 Action Plan and the NSW State Plan “NSW 2021 – A Plan to make NSW number one”.
- Conduct its work in a manner that recognises the terms of reference and approach being taken by the Independent Local Government Review Panel.

At the time of finalisation of the Taskforce report the Independent Local Government Review Panel (Independent Panel) had not submitted its final report to the Minister. The Taskforce report does not address those issues the Independent Panel is likely to include in its report as potentially requiring legislation. Furthermore the Taskforce acknowledges that, as listed in Table 3 below several other local government related reviews have not been completed.



## 1.2 Members of the Local Government Acts Taskforce

The members of the Local Government Acts Taskforce are:

Mr John Turner (Chair)

Mr Stephen Blackadder

Mrs Gabrielle Kibble AO

Dr Ian Tiley

Details of the Taskforce members can be found on the Taskforce website:

[http://www.dlg.nsw.gov.au/dlg/dlghome/dlg\\_LGAT.asp?mi=10&ml=2&SecHd=MEMBERS&AreaIndex=TASKFORCE](http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_LGAT.asp?mi=10&ml=2&SecHd=MEMBERS&AreaIndex=TASKFORCE)

## 1.3 Executive Summary

In 2012, the Minister for Local Government, the Hon Don Page MP appointed the Local Government Acts Taskforce to rewrite the *Local Government Act 1993* (the Act) and review the *City of Sydney Act 1988* (CoSA). Under the terms of reference the Taskforce was required to consult widely and have regard to the outcomes of other reviews of the local government sector (listed in Table 3), including the findings of the Independent Local Government Review Panel and the review of the planning system in NSW.

At the time of presenting this report neither of these reviews have been finalised. This has had the effect of limiting the scope of the Taskforce, as it has been unable to consider those sections of the Act that will be impacted by the outcomes of those reviews.

### Purpose and Approach

The purpose of the review is to rewrite the Local Government Act and review the City of Sydney Act with the intention of developing principles-based, enabling legislation that is streamlined, easily understood, in a logical framework, eliminates unnecessary red tape and will provide a legislative and statutory framework to meet the current and future needs of the community and the local government sector.

In undertaking the review, the Taskforce consulted widely holding workshops at locations across NSW and meeting with individual stakeholders and special interest groups. The Taskforce released two discussion papers and invited written submissions commenting on the ideas and proposals contained in these papers.

The Taskforce has considered the responses received from all sources, as well as conducting its own research on comparative legislation in other jurisdictions. Using this information the Taskforce has formulated the recommendations detailed in this report.

### A New Local Government Act for NSW

The Taskforce recommendations for a new Local Government Act for NSW are summarised in section 1.4. The Taskforce has endeavoured to remove unnecessary prescription from the Act by recommending principles-based legislation that is sufficiently flexible to support the diverse local government sector.

It is evident that many aspects of the Act still work well. However, its effectiveness has been eroded as a consequence of the manner in which the Act is currently structured which is as a result of incremental amendments over the past 20 years.

The IPR provisions of the Act, which commenced in 2009, provide the primary strategic planning mechanism for local government in NSW. It is evident to the Taskforce that these provisions are working extremely well and have widespread support across local government.

The Taskforce considers it is essential for the long term sustainability of local government that IPR is given much greater prominence in the new Act. Accordingly the primary recommendation of the Taskforce is that the IPR sections of the Act are given more prominence and a new Act be written using IPR as its central framework.

It is the view of the Taskforce that in restructuring the Act with IPR as its central framework and ensuring that wherever possible the other sections of the Act are redrafted to align with IPR will result in a more logical, streamlined Act. The IPR framework will enhance collaboration between

councils and the State, provide increased autonomy to councils to facilitate strong and sustainable local government, capable of delivering appropriate services and resources based on community expectations and aspirations.

### **Review of the City of Sydney Act**

In undertaking its review of the CoSA the Taskforce consulted widely and with specific stakeholders including representatives of the Sydney City Council. Meetings were held with representatives of the NSW and Victorian Electoral Commission to discuss issues regarding the non-residential electoral roll. The findings of the 2010 Independent Review of the Central Sydney Planning Committee were also considered.

The Taskforce has concluded that under the current boundary arrangements there is a need to retain a separate Act for the City of Sydney in recognition of the administrative and economic importance of the central business district of Sydney and its unique position in holding events of local, regional, national and international significance.

In respect of the non-residential electoral roll the Taskforce is recommending a number of changes to the manner in which the roll is compiled and managed. The recommendations are contained in Chapter 4 of this report.

## 1.4 Recommendations by the Taskforce

**Table 2 - Summary of Taskforce Recommendations**

Topic	Recommendations
<p><b>3.0.0</b> <b>Approach and Principles for the Development of the New Act</b></p>	<p><b>The Taskforce recommends</b></p> <ol style="list-style-type: none"> <li>(1) integrated planning and reporting form the central framework for the new Act providing local government with a robust strategic planning mechanism that is based on community engagement, expectations and aspirations, and financial responsibilities</li> <li>(2) a flexible, principles-based legislative framework, avoiding excessive prescription and unnecessary red tape, written in plain language and presented in a logical format. 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, regulations, codes and guidelines should be used</li> <li>(3) a more consistent approach be adopted to the definition, naming and use of regulatory and other instruments, noting that currently there is inconsistent use of mandatory and discretionary codes, guidelines, practice notes, discretionary guidelines and the like.</li> </ol>
<p><b>3.1.0</b> <b>Structure of the New Local Government Act</b></p>	<p><b>The Taskforce recommends</b> that the new Act is structured with the following elements:</p> <p><b>Part I - Structural Framework of Local Government in NSW</b></p> <ul style="list-style-type: none"> <li>• Purpose of Local Government Act – 3.1.1</li> <li>• Role of Local Government – 3.1.2</li> <li>• Guiding Principles – 3.1.2</li> <li>• Legal status of councils (includes establishment) – 3.1.3</li> <li>• Roles and Responsibilities of Council Officials – 3.1.4</li> </ul> <p><b>Part II - Strategic Framework for Local Government in NSW</b></p> <ul style="list-style-type: none"> <li>• Integrated Planning and Reporting – 3.2.1</li> <li>• Community Engagement – 3.2.2</li> <li>• Performance of Local Government – 3.2.3</li> </ul> <p><b>Part III - Council Operations</b></p> <ul style="list-style-type: none"> <li>• Governance Framework – 3.3.1 – 3.3.8</li> <li>• Financial practices – 3.3.9 – 3.3.11</li> <li>• Public Private Partnerships – 3.3.12</li> <li>• Public Land – 3.3.13 – 3.3.14</li> <li>• Regulatory Functions – 3.3.15 – 3.3.16</li> <li>• Other functions</li> </ul> <p><b>Part IV - Tribunals and Commissions - 3.3.17</b></p>
<p><b>3.1.1</b> <b>Purposes of the Local Government Act</b></p>	<p><b>The Taskforce recommends</b> that the Purposes of the Local Government Act be drafted as follows:</p> <p>The purpose of this Act is to provide</p> <ol style="list-style-type: none"> <li>(1) a legal framework for the NSW system of local government in accordance with section 51 of the <i>Constitution Act 1902 (NSW)</i></li> <li>(2) the nature and extent of the responsibilities and powers of local government</li> <li>(3) a system of local government that is democratically elected, interactive with and accountable to the community, and is sustainable, flexible, effective and maximises value.</li> </ol>
<p><b>3.1.2</b> <b>Role and Guiding Principles of Local Government</b></p>	<p><b>The Taskforce recommends</b> the inclusion of a new Role of local government and a set of Guiding Principles for local government as follows:</p> <p><b>Role of Local Government</b></p> <p>The Role of local government is to provide local democracy, strategic civic leadership, stewardship and sound governance to achieve sustainable social, economic, environmental, health and wellbeing and civic engagement through:</p> <ol style="list-style-type: none"> <li>(1) utilising integrated planning and reporting</li> <li>(2) working in cooperative arrangements with the community, other councils, State and Commonwealth Governments to achieve and report outcomes based on community priority as established through integrated planning and reporting</li> <li>(3) providing or procuring effective, efficient and financially affordable economic assets, services and regulation</li> <li>(4) exercising democratic local leadership and inclusive decision-making</li> <li>(5) having regard to the long term and cumulative effects of its decisions</li> <li>(6) valuing local difference and system diversity</li> <li>(7) committing to the application of the Guiding Principles of local government</li> </ol>

Topic	Recommendations
<p><b>3.1.2</b> <b>Role and Guiding Principles of Local Government</b> <b>cont'd</b></p>	<p><b>Guiding Principles of Local Government</b></p> <p>Guiding Principles to be observed by local government are to:</p> <ol style="list-style-type: none"> <li>(1) provide elected community-based representative and participatory local democracy, and open and accountable government</li> <li>(2) foster and balance the needs, interests, social and economic wellbeing of individuals, diverse groups and community</li> <li>(3) adhere to the social justice principles of equity, rights, access and participation</li> <li>(4) encourage stewardship and facilitate sustainable, responsible management of resources, infrastructure and development</li> <li>(5) consider future generations by protecting, restoring and enhancing the quality of the environment to maintain ecologically sustainable development, reduce risks to human health and prevent environmental degradation</li> <li>(6) ensure sustainable management and that all decisions incorporate considerations of risk management and long-term sustainability</li> <li>(7) recognise the responsibility of other levels of government in the provision of local services while accepting that local choices should be made at the local level wherever possible under the principle of subsidiarity</li> <li>(8) achieve and maintain accepted best practice public governance and administration, and act fairly, responsibly, ethically, transparently and in the public interest</li> <li>(9) optimise technology, and foster innovation and continuous improvement.</li> </ol>
<p><b>3.1.3</b> <b>Constitution of Councils</b></p>	<p><b>The Taskforce recommends</b> that the legal status of councils remains as a “body politic”.</p>
<p><b>3.1.4</b> <b>Roles and Responsibilities of Council Officials</b></p>	<p><b>The Taskforce recommends</b> following consideration of the final report of the Independent Panel, the roles and responsibilities of mayors, councillors and general managers are reviewed to ensure they align with the requirements of the strengthened IPR framework (see section 3.2.1 below) and any recommendations of the Independent Panel that may be adopted by the State Government.</p>
<p><b>3.2.1</b> <b>Integrated Planning and Reporting (IPR)</b></p>	<p><b>The Taskforce recommends</b></p> <ol style="list-style-type: none"> <li>(1) elevating IPR to form the central framework of the new Act and the primary strategic tool that enables councils to fulfil their civic leadership role and deliver infrastructure, services and regulation based on community priorities identified by working in partnership with the community, other councils and the State Government</li> <li>(2) strengthening and embedding the principles of IPR in the Act more broadly, setting minimum standards in the Act and defining process through regulation, codes and/or guidelines</li> <li>(3) removing duplication from other parts of the Act, where the principle or practice is already captured in the IPR legislation or guidelines</li> <li>(4) ensuring the legislation facilitates a strategic leadership role for councils in their local communities</li> <li>(5) moving sections of the Act to other legislation, in order to create an Act that better reflects the strategic role of councils and the framework that ensures and enables that role. The Taskforce proposes the outline displayed in Table 6 as the chapter structure of the new Act</li> <li>(6) simplifying the provisions of IPR to increase flexibility for councils to deliver IPR in a locally appropriate manner.</li> </ol>
<p><b>3.2.2</b> <b>Community Engagement</b></p>	<p><b>The Taskforce recommends</b></p> <ol style="list-style-type: none"> <li>(1) councils prepare the most locally appropriate and flexible community engagement strategy guidelines. This will provide communities the opportunity to engage, through the following and other locally appropriate principles, and allow a flexible framework for continuing community engagement. The principles for such strategy will: <ol style="list-style-type: none"> <li>a. include commitment to the community being at the centre of local government using ongoing engagement which ensures fairness in the distribution of resources; rights are recognised and promoted; people have fairer access to the economic resources and services essential to meet their basic needs and to improve their quality of life; and people have better opportunities to become informed and involved especially through use of technology</li> <li>b. consider and understand 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 engagement and the scope of the decision(s) to be taken</li> </ol> </li> </ol>

Topic	Recommendations
<p><b>3.2.2</b> <b>Community Engagement cont'd</b></p>	<ul style="list-style-type: none"> <li>c. consider and understand that interested persons should have adequate time and reasonable opportunity to present their views to the council in an appropriate manner and format</li> <li>d. ensure that the views presented to the council will be given due consideration</li> <li>e. consider and understand that councils, in exercising their discretion as to how engagement will proceed in any particular circumstance, will have regard to the reasonable expectations of the community, the nature and significance of the decision or matter, the costs and benefits of the consultation process, and to intergenerational equity</li> <li>f. arrange flexible special engagement procedures in particular instances</li> <li>g. consider all groups, even though it may be difficult to reach every diverse community group, and some groups will choose not to engage.</li> </ul>
<p><b>3.2.3</b> <b>Performance of Local Government</b></p>	<p><b>The Taskforce recommends</b> that a performance system is developed that is linked to IPR and includes the following elements:</p> <ul style="list-style-type: none"> <li>(1) a standard series of measures that can compare the performance of councils across the State</li> <li>(2) an analysis of the performance measures results so that councils can identify the actions required to elevate performance</li> <li>(3) a self-assessment of the performance of the governing body on an annual basis</li> <li>(4) in lieu of an end of term report, councils provide a mid-term report as to progress with the Community Strategic Plan.</li> </ul>
<p><b>3.2.4</b> <b>Technology</b></p>	<p><b>The Taskforce recommends</b></p> <ul style="list-style-type: none"> <li>(1) as a general principle the Act should enable optimal, flexible and innovative use of technology by councils to promote efficiency and enhance accessibility and engagement for the benefit of constituents</li> <li>(2) the Act should allow each council to determine the most appropriate use of technology taking into account the Guiding Principles of local government and community engagement through the IPR framework.</li> </ul>
<p><b>3.3.1</b> <b>Elections</b></p>	<p><b>The Taskforce recommends</b></p> <ul style="list-style-type: none"> <li>(1) councils to have the option of using universal postal voting or alternative means of voting such as technology assisted voting where feasible as a means of increasing efficiency and voter participation and reducing council costs</li> <li>(2) the Act be drafted so as to enable the adoption of new technologies such as technology assisted voting when feasible to do so</li> <li>(3) include mechanisms for removing the need for by-elections, when a vacancy occurs either in the first year following an ordinary council election or up to 18 months prior to an ordinary election as a means of avoiding the holding of costly by-elections</li> <li>(4) a counting system should be adopted as an appropriate mechanism for filling vacancies that occur within the first year following an ordinary election whereby the unelected candidate who had the next highest number of votes be appointed to fill the vacant position</li> <li>(5) councils to be required to fill vacancies occurring after the first year following an ordinary election and up to 18 months prior to the next ordinary election by the postal voting method</li> <li>(6) where universal postal voting is used for any election, a candidate information booklet is to be included in ballot packs as a way of increasing voter knowledge of the candidates</li> <li>(7) the transfer of local government elections law to a single new Elections Act to consolidate all State and local government election provisions along with the regulation of campaign finance and expenditure</li> <li>(8) the term of mayors elected by the councillors to be extended from 1 year to 2 years.</li> </ul>
<p><b>3.3.2</b> <b>Meetings</b></p>	<p><b>The Taskforce recommends</b> that the provisions relating to council meetings be:</p> <ul style="list-style-type: none"> <li>(1) 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</li> <li>(2) modernised and unnecessary prescription and red tape removed</li> <li>(3) designed to facilitate councils utilising current and emerging technologies in the conduct of meetings and facilitating public access</li> <li>(4) flexible to enable remote attendance through technology at council meetings in emergencies such as natural disasters.</li> </ul>

Topic	Recommendations
<p><b>3.3.3</b> <b>Appointment and Management of Staff</b></p>	<p><b>The Taskforce recommends</b></p> <p>(1) the strategic responsibilities of the council be clearly separated from operational responsibilities and be aligned with IPR by:</p> <ul style="list-style-type: none"> <li>• the council being responsible: <ul style="list-style-type: none"> <li>• for determining those services and priorities required by the community, and for providing the necessary resources to achieve the council's Delivery Program; and</li> <li>• on the advice of the general manager, the council determine the organisation structure to the level that directly reports to the general manager</li> </ul> </li> <li>• the general manager being responsible: <ul style="list-style-type: none"> <li>• for determining the balance of the organisation structure; and</li> <li>• for recruiting all staff with appropriate qualifications to fulfill each role within the structure. The general manager will consult with council regarding the appointment and dismissal of senior staff</li> </ul> </li> </ul> <p>(2) positions meeting the criteria as senior staff be appointed under the prescribed standard contract for senior staff, identified as senior staff positions within the organisation structure, and remuneration be reported in the council's annual report</p> <p>(3) each council to determine arrangements for regulatory responsibilities other than under the Act</p> <p>(4) 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>(5) that the maximum term allowable for temporary staff appointments be extended from 1 year to 2 years</p>
<p><b>3.3.4</b> <b>Regional Strategic Organisations of Councils and Formation and Involvement in Corporations and Other Entities</b></p>	<p><b>The Taskforce recommends</b></p> <p>(1) the Act include a mechanism enabling councils to form statutory entities to undertake regional strategic collaboration activities. The Taskforce is of the view that, in place of Regional Organisations of Councils, a model similar to that developed by the Hunter Councils – Council of Mayors provides a suitable mechanism for achieving regional strategic collaboration, with the exception of Western NSW. ROCs could transition to a Council of Mayors to broaden joint collaboration between councils</p> <p>(2) the provisions of the Act relating to the formation of corporations and other entities should continue.</p>
<p><b>3.3.5</b> <b>Protection from Liability</b></p>	<p>The Taskforce does not propose changes to the liability provisions of the Act.</p>
<p><b>3.3.6</b> <b>Code of Conduct</b></p>	<p>The Taskforce does not propose changes to the conduct provisions of the Act.</p>
<p><b>3.3.7</b> <b>Pecuniary Interest</b></p>	<p><b>The Taskforce recommends</b></p> <p>(1) the pecuniary interest provisions be reviewed to ensure they are written in plain language, easily understood and with unnecessary red tape removed</p> <p>(2) consideration be given to utilising technology to assist with the submission and maintenance of pecuniary interest disclosures and to facilitate appropriate access to this information, while ensuring that privacy rights are protected.</p>
<p><b>3.3.8</b> <b>Delegations</b></p>	<p><b>The Taskforce recommends</b></p> <p>(1) that the provisions of the Act relating to delegations be reviewed to ensure that 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>(2) that the exceptions to delegations of an operational nature not be carried forward to the new Act, ensuring the council focuses on strategic decisions, consistent with IPR. These would include for example:</p> <ul style="list-style-type: none"> <li>• acceptance of tenders</li> <li>• provision of minor financial assistance to community groups</li> <li>• delegation of regulatory functions to another council or shared services body.</li> </ul>

Topic	Recommendations
<p><b>3.3.9</b> <b>Financial Governance</b></p>	<p><b>The Taskforce recommends</b></p> <ol style="list-style-type: none"> <li>(1) there be greater focus on principles and definition of financial systems and minimum standards in the new legislative framework and for assimilation of financial governance with the IPR requirements</li> <li>(2) there be a realignment of the regulatory focus under the legislative framework towards systems and risk management rather than process prescription</li> <li>(3) complementing the Guiding Principles of local government, the new Act should articulate a set of financial (or corporate) governance principles that align more effectively with the principles and objectives of IPR, especially in relation to stewardship of resources and accountability. For example: <ol style="list-style-type: none"> <li>a. safeguarding integrity in financial reporting</li> <li>b. making timely and balanced disclosures</li> <li>c. recognising and managing risk</li> </ol> </li> <li>(4) minimum expectations be prescribed by legislation or sub-regulatory instrument. A potential framework is: <ol style="list-style-type: none"> <li>a. financial management governance and oversight</li> <li>b. financial management structure, systems, policies and procedures</li> <li>c. financial management reporting</li> </ol> </li> <li>(5) financial statement requirements be included under IPR annual reporting requirements</li> <li>(6) a further review of rating and finance matters be undertaken as required after the Independent Panel recommendations are determined by the State Government.</li> </ol>
<p><b>3.3.10</b> <b>Procurement</b></p>	<p><b>The Taskforce recommends</b></p> <ol style="list-style-type: none"> <li>(1) the adoption of central principles of procurement combined with a medium level of regulation to ensure support of the following principles: <ol style="list-style-type: none"> <li>a. accountability</li> <li>b. value for money</li> <li>c. probity, equity, fairness and risk management</li> <li>d. efficient and effective competition</li> <li>e. market assessment</li> </ol> </li> <li>(2) main considerations for each principle be contained in the Act or regulations, with further considerations contained in guidelines or a mandatory code</li> <li>(3) a council's procurement framework be consistent with its IPR framework</li> <li>(4) rather than the legislation setting a monetary threshold, a more flexible principles-based approach be established to enable councils to determine their threshold based on risk assessment of the proposed procurement and the procurement principles</li> <li>(5) regulation of procurement support councils entering into collaborative procurement arrangements and utilising technologies to assist with efficient, effective and economic procurement processes that are accessible to all relevant stakeholders and are fair, open and transparent</li> <li>(6) a regulation or code to express councils' default procurement framework</li> <li>(7) councils be qualified to adopt a more strategic approach through "earned autonomy" whereby: <ol style="list-style-type: none"> <li>a. the Division of Local Government may exempt a council from compliance with a requirement under the regulation or code where it is satisfied that a council's procurement framework is consistent with the procurement principles; and</li> <li>b. qualification for a council's earned autonomy may be through an accreditation process or by council's development and diligent maintenance of policies and practices that are consistent with requirements issued by the Division of Local Government or other oversight entity. Qualification by accreditation is preferred as this should increase the accountability of councils to the community.</li> </ol> </li> <li>(8) councils continue to be able to take advantage of purchasing from Commonwealth and State Government procurement panels and the State Government policies which afford exemption from tendering obligations such as when purchasing from registered Australian Disability Enterprises.</li> </ol>
<p><b>3.3.11</b> <b>Capital Expenditure Framework</b></p>	<p><b>The Taskforce recommends</b> a capital expenditure and monitoring guideline be developed that integrates with the IPR framework and enables the appropriate management of risk by councils. This guideline should be tailored to risk levels, including significance of the project, materiality and whole of life costs, and not based on arbitrary monetary thresholds or procurement vehicles.</p>

Topic	Recommendations
<p><b>3.3.12</b> <b>Public Private Partnerships (PPP)</b></p>	<p><b>The Taskforce recommends</b></p> <ol style="list-style-type: none"> <li>(1) that PPP projects continue to be subject to regulation due to the significance of the risks involved</li> <li>(2) aspects that could be streamlined or simplified be identified and mechanisms for ensuring PPPs be considered for inclusion in the IPR framework.</li> </ol>
<p><b>3.3.13</b> <b>Acquisition of Land</b></p>	<p><b>The Taskforce recommends</b> council plans for the compulsory 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>
<p><b>3.3.14</b> <b>Public Land</b></p>	<p><b>The Taskforce recommends</b></p> <ol style="list-style-type: none"> <li>(1) councils be required to strategically manage council-owned public land as assets through the IPR framework</li> <li>(2) balancing reasonable protections for public land use and disposal by retaining the classification regime of public land as either community or operational land and require a council resolution at the time of acquiring or purchasing land to specify the classification, category and proposed use or uses</li> <li>(3) a proposed change in the use or disposal of community land be addressed through the council's Asset Management Planning and Delivery Program</li> <li>(4) a public hearing be held by an independent person where it is proposed to change the existing dominant use or to dispose of community land, with the results of the public hearing to be reported to and considered by the council before a decision is made</li> <li>(5) any use of a public hearing or other consultation process under the Act be specified in the council's Community Engagement Strategy</li> <li>(6) recognising the LEP zoning processes and restrictions applying to council owned public land</li> <li>(7) simplifying and reducing the categories and sub-categories of use to which community land may be applied through the Asset Management Planning process so as to identify and accommodate other ancillary or compatible uses appropriate to the current and future needs of the community</li> <li>(8) ceasing the need for separate plans of management for community land to be prepared and maintained, and in lieu, utilise the Asset Management Planning and Delivery Program of the IPR process</li> <li>(9) ceasing the need for a separate report to be obtained from the Department of Planning and the need for ministerial approval where council proposes to grant a lease, licence or other estate over community land in excess of the current 5 years, where an objection has been received by the council</li> <li>(10) proposed leases and licences be addressed as part of the council's Asset Management Plan and adopted Community Engagement Strategy with the 30 year maximum term to remain unchanged.</li> </ol>
<p><b>3.3.15</b> <b>Approvals, Orders and Enforcement</b></p>	<p><b>The Taskforce recommends</b></p> <ol style="list-style-type: none"> <li>(1) regulatory provisions be reviewed to ensure that the Act provides guidance on regulatory principles but contains flexibility and less prescription in regulation implementation, provision of statutory minimum standards or thresholds, and councils having discretionary "on-the-ground" functions</li> <li>(2) consideration be given to the notion of a risk based approval process where persons or corporations are given general approval to conduct certain work rather than dealing with applications on a piecemeal basis</li> <li>(3) within this framework, the prescriptive processes of approvals and orders be streamlined and, subject to risk assessment, be placed where possible into regulations</li> <li>(4) removal of as many approvals and orders as possible and placing in specialist legislation if they cannot be repealed</li> <li>(5) the principles for dealing with approvals and orders be incorporated into a council's IPR framework through the Delivery and Operational Plans, including adoption of an Enforcement Policy and any LAPs and LOPs</li> <li>(6) penalties for offences in the Act and regulations be increased to ensure they are proportionate to the nature of the offence, and that the ability to serve a penalty notice should be made an option for additional offences</li> <li>(7) councils be required to adopt an Enforcement Policy stating what factors will be considered in determining whether or not to take action, including the level of risk. The factors should be consistent across all councils</li> <li>(8) improving councils' ability to recover costs for conducting work on private land</li> <li>(9) aligning council powers of entry with contemporary legislative standards</li> <li>(10) increasing the time limit for commencing summary proceedings from 6 to 12 months.</li> </ol>



Topic	Recommendations
<b>3.3.16</b> <b>Water Management</b>	<p><b>The Taskforce</b> supports changes proposed to water recycling provisions which will consolidate and simplify the legislative framework. Otherwise the Taskforce makes no recommendations regarding the structures for the delivery of water and sewerage in non-urban areas, noting that the Taskforce gave the issue consideration but is aware this area is being dealt with by other reviews.</p>
<b>3.3.17</b> <b>Tribunals and Commissions</b>	<p><b>The Taskforce notes</b></p> <ol style="list-style-type: none"> <li>(1) it is expected the Local Government Pecuniary Interest and Disciplinary Tribunal will be consolidated into the newly constituted NSW Civil and Administrative Tribunal</li> <li>(2) the Independent Panel is examining the issue of structures and boundaries, how boundary changes might be facilitated, and possible change of method of operation of the Local Government Boundaries Commission and accordingly makes no comment pending the outcome of this review</li> <li>(3) consideration be given whether to merge the Local Government Remuneration Tribunal with the Statutory and Other Officers Remuneration Tribunal.</li> </ol>
<b>3.3.18</b> <b>Other Matters</b>	<p><b>The Taskforce recommends</b></p> <ol style="list-style-type: none"> <li>(1) consistent with Taskforce recommendation 1.3, that in place of sections 23A and 10B(5) that the Act empowers the Director General to issue mandatory codes on operational and governance matters relevant to local government</li> <li>(2) a formal Oath of Office for councillors is introduced as a mechanism for inducting councillors into their role and reinforcing the serious nature of the role and the chief responsibilities and duties the role entails</li> <li>(3) the provisions of the Act governing councils' expenses and facilities policy are reviewed to ensure they are streamlined and unnecessary red tape eliminated</li> <li>(4) a review be undertaken of circumstances that do not invalidate council decisions and including consideration of the appropriateness of adding the following to those circumstances that do not invalidate council decisions – "a failure to comply with the consultation and engagement principles"</li> <li>(5) conferring authority on councils to allocate, maintain and enforce property numbering</li> <li>(6) councils be provided with an effective means to regulate camping in vehicles on road and road related areas</li> <li>(7) the following matters be reviewed depending on the outcomes of other reviews currently incomplete: <ol style="list-style-type: none"> <li>a. how councils are financed, particularly rating. The Taskforce consistently received feedback detailing issues with the provisions of the Act relating to how councils are financed</li> <li>b. community engagement to ensure consistency with the planning community participation proposals under the new Planning Act if adopted</li> <li>c. Tribunals and Commissions, particularly the role and functions of the Boundaries Commission to ensure that the Act supports recommendations of the Independent Panel adopted by the State Government</li> <li>d. roles and responsibilities of council officials. It is essential that the Act clearly defines the roles and responsibilities of the mayor, councillors and the general manager. The Taskforce recommends that these definitions are reviewed to ensure they reflect recommendations of the Independent Panel adopted by the State Government.</li> </ol> </li> </ol>

Topic	Recommendations
<p>4.1 City of Sydney Act</p>	<p><b>The Taskforce recommends</b></p> <p>(1) a separate Act for the City of Sydney be retained (pending the report and recommendations of the Independent Panel) noting that the Sydney City Council is also subject to the provisions of the Local Government Act</p> <p>(2) the electoral provisions applying to the Sydney City Council be transferred from the CoSA to a new Elections Act, as recommended at section 3.3.1 above, thereby providing a single repository for NSW electoral law</p> <p>(3) residents of the City of Sydney who are at the relevant date enrolled, within the meaning of the <i>Parliamentary Electorates and Elections Act 1912</i>, on the roll for any electoral district and whose place of living as described on the rolls is within the City of Sydney, shall be entitled to one vote provided that if a person is so entitled to vote because they are a resident of the City of Sydney, they shall not be entitled to be enrolled as an elector in any other capacity</p> <p>(4) (i) that persons presently entitled to vote and corporations who are entitled to nominate a person to vote on its behalf to vote under the CoSA at Council elections be entitled to enrol to vote (ii) that persons, other than those on the roll as set out in recommendation 4.1(3) being presently entitled to vote under the CoSA at Council elections, retain that entitlement to enrol to vote. If a person so entitled to enrol to vote or a corporation who is entitled to nominate a person to enrol to vote on their behalf has not enrolled to vote by the due date or being a corporation nominated a person to enrol to vote on their behalf by the due date, then those persons so entitled to vote as individuals or on behalf of corporations shall be deemed to be enrolled to vote at the Council election (iii) in the case of corporations, if no nomination has been made by a corporation of a person to be entitled to vote on behalf of the corporation the Council will, from the records of ASIC, as mentioned in recommendation 4.1(5) hereof, enroll the first director in alphabetical order to vote on behalf of that corporation and if that director may be disqualified to vote for any reason, the next director in alphabetical order until a director is validly appointed to vote on behalf of the corporation</p> <p>(5) the Sydney City Council determines, from all available Council information and records as well as information provided by ASIC, the person deemed to be entitled to vote on behalf of non-resident owners and corporations</p> <p>(6) to determine the occupiers entitled to vote, the Sydney City Council canvas the businesses within the City of Sydney six months before council elections to determine such entitlement</p> <p>(7) the non-residential rolls be prepared and maintained by the Sydney City Council with the General Manager of the Council to certify the rolls</p> <p>(8) for the Sydney City Council election, the postal voting method be compulsory for all people enrolled or deemed to be enrolled as non-residential enrollees</p> <p>(9) that non-compulsory candidate information be required to be distributed with the ballot papers sent out as part of the postal voting procedure, limited to a photo of the candidate and 250 words</p> <p>(10) that those enrolled as non-resident enrollees shall remain on the rolls for two ordinary elections unless they sooner lose their qualification or are disqualified from being an enrollee.</p>

## CHAPTER 2 – APPROACH & CONSULTATION

### 2.1. Approach to the Review

The Taskforce has endeavoured to make recommendations that will support local government in the long term and assist it to deliver services the community requires in a sustainable, economic and efficient manner.

The recommendations have been developed with the objective of a streamlined Act that is flexible and able to support the diversity of local government while also being understandable and avoiding unnecessary red tape. The Taskforce has adopted a principles-based approach recommending, that wherever possible, the Act articulates the principles to be applied by local government in undertaking its role (“the why”) with necessary prescription (“how to”) being removed to regulations, codes or guidelines as appropriate.

The Taskforce has consulted widely and considered the responses and submissions received. The Taskforce greatly appreciates the time and effort contributed by all those people who attended meetings and workshops or who made written submissions.

### 2.2. Limitations of Scope

Under its terms of reference the Taskforce was required to

- *“Take account of the work, findings and government decisions, in relation to the NSW Planning System Review, the Destination 2036 Action Plan and the NSW State Plan “NSW 2021 – A Plan to make NSW number one”.*
- *Conduct its work in a manner that recognises the terms of reference and approach being taken by the Independent Local Government Review Panel.*
- *Adopt the decisions of the Government in relation to the recommendations of the Independent Local Government Review Panel.”*

At the time the Taskforce commenced its work it was expected that the Independent Panel would report to the Government several months prior to

the Taskforce finalising its report. However the final report of the Independent Panel has been delayed and consequently it is now to report to the Government at the same time as the Taskforce. Furthermore, at the time of preparing this report the draft legislation on the NSW planning system is being further reviewed.

As a consequence, while the Taskforce has consulted with the Independent Panel and representatives of the Department of Planning and has had regard to their interim reports, the Taskforce has not been able to completely fulfil the requirements of its terms of reference. Recognising the terms of reference of the Independent Panel, there are a number of components of the Act that the Taskforce has not addressed including:

- How councils are established – Chapter 9
- Local Government Boundaries Commission – Chapter 9, Part 3
- Arrangements for council staff affected by the constitution, amalgamation or alteration of council areas - Chapter 11, Part 6
- Financial Management - Chapter 13, Part 3
- How are Councils Financed - Chapter 15

In addition to the work of the Independent Panel, the Taskforce recognised that several other reviews are being concurrently conducted (Table 3) that could affect some of the Taskforce recommendations.

**Table 3 – Reviews currently being conducted with relevance to the review of the Local Government Act and the City of Sydney Act**

Review Subject	Lead Agency	Comment
Local Government Compliance and Enforcement	Independent Pricing and Regulatory Tribunal	The NSW Government has asked IPART to examine local government compliance and enforcement activity (including regulatory powers delegated under NSW legislation) and provide recommendations that will reduce unnecessary regulatory burdens for business and the community. See <a href="http://www.ipart.nsw.gov.au">www.ipart.nsw.gov.au</a> .
Red Tape Review – Licence Rationale and Design	Independent Pricing and Regulatory Tribunal	The NSW Government has asked IPART to examine all licence types in NSW and identify those where reform would produce the greatest reduction in regulatory burden for business and the community. The aim is to consider the class of instruments that regulators use to grant permission to undertake a particular activity and manage risk.
Crown Land Management Review	Department of Primary Industries	A crown land management review is currently underway. The Division of Local Government, together with other State agencies, is participating on the Legislative Overlap and Red Tape Working Group. One task of the Group is to consider ways in which these areas of overlap can be avoided or mitigated.
Domestic Wastewater	Legislative Assembly Committee on Environment and Regulation, NSW Parliament	The Legislative Assembly Committee on Environment and Regulation is conducting an inquiry into the regulation of domestic wastewater, including the appropriateness of current regulatory arrangements for the management of domestic wastewater and the adequacy of inspection procedures and requirements to report incidents. Further detail is found later in this paper under 'On-Site sewerage management'.
Urban Water Regulation Review	Department of Finance and Services	Review of the <i>Water Industry Competition Act 2006</i> and the wider regulatory framework – principally sections 60 and 68 of the Local Government Act 1993 used to regulate council and private recycled water schemes.
Local Government Elections	Joint Standing Committee on Electoral Matters, NSW Parliament	An inquiry is being conducted into the September 2012 Local Government elections with particular reference to: the cost; experience of councils that conducted their own elections; efficiency and participation; non-residential voting; and the impact of the Election Funding, Expenditure and Disclosures Act 1981 on participation by candidates. See <a href="http://www.parliament.nsw.gov.au/electoral_matters">www.parliament.nsw.gov.au/electoral_matters</a>
Other reviews		<i>Reviews of the Land Acquisition (Just Terms Compensation) Act 1991</i> and the Residential Parks Act 1998 are also underway by their respective agencies.

### 2.3. Consultation

In October 2012, the first round of general consultation was held following the release of the Taskforce “*Preliminary Ideas*” Paper. From 24 October to 4 December 2012 the Taskforce held workshops at 14 locations across NSW and extensively consulted with councillors and council staff on the questions posed in the “*Preliminary Ideas*” paper. The workshops were attended by a total of 380 people from 111 local government areas, 5 county councils, 4 regional organisations of councils and representatives from Local Government NSW.

Written submissions were also sought and the Taskforce received a total of 112 submissions in response to the “*Preliminary Ideas*” paper. A summary of the key themes identified from these submissions are contained in the Taskforce’s Discussion Paper “*A New Local Government Act for NSW*” which was released in April 2013.

The second round of consultations was held following the release of the Taskforce’s Discussion Paper. From 4 April to 26 June 2013, workshops open to all interested persons were held in 14 locations across NSW. They were attended by 416 participants including elected and staff representatives from councils, regional organisations of councils, county councils, professional and community groups, and members of the public.

Written submissions were invited on the proposals contained in the Discussion Paper. 171 written submissions were received and have been published on the Taskforce webpage:

[http://www.dlg.nsw.gov.au/dlg/dlghome/dlg\\_LGAT.asp?mi=10&ml=2&SecHd=HOME&AreaIndex=TASKFORCE](http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_LGAT.asp?mi=10&ml=2&SecHd=HOME&AreaIndex=TASKFORCE)

Table 4 contains a summary of the stakeholder groups providing submissions.

**Table 4 – Submissions by stakeholders to Discussion Paper “*A New Local Government Act for NSW*”.**

Category	Number of Submissions
Councils	85
Regional Organisations of Councils	12
County Councils	3
Professional Groups	9
Business Organisations	4
Community Groups	6
Private Individuals	38
Government Agencies	14
<b>TOTAL</b>	<b>171</b>

## 2.4 Feedback from Workshops and Written Submissions – Round II

The submissions received in response to the Discussion Paper varied broadly from commenting on a single issue through to very detailed comments on each of the twenty (20) proposals contained in the paper.

It was evident that considerable time and effort had been made to provide positive suggestions to add value to the proposals. The Taskforce is

most appreciative of the contributions of the people and organisations who made a written submission and/or attended one of the Taskforce workshops.

The feedback received by the Taskforce was overwhelmingly supportive of many of the Taskforce’s proposals. Table 5 contains a summary of the key issues and themes arising from the workshops and written submissions. As such it is not exhaustive and does not cover all the detailed matters contained in the submissions.

**Table 5 – Summary of key themes arising from feedback received in response to the Taskforce Discussion Paper.**

<b>Part I – Guiding Principles for a New Local Government Act</b>
<p>The Taskforce provided three proposals relating to overarching principles for the new Act. The feedback from workshops and written submissions was largely supportive of all three proposals.</p> <p>Most feedback was received in relation to proposal 3.1.2 – Role and Guiding Principles of Local Government and ranged from minor word changes to suggested entire redraft of the proposed clauses. The following suggestions were commonly offered:</p> <ul style="list-style-type: none"> <li>• Importance of articulating a broad enabling role for local government and the relationship between the tiers of government</li> <li>• the value of including specific reference to health and sustainability and the importance of retaining the provision of the current Charter that “councils have regard to the long term and cumulative effects of its decisions”</li> </ul> <p>Concerning the proposed Guiding Principles for local government, the main suggestions were that the principles clarify that councils should consider the needs of the broad community and include social justice principles and retain reference to ecologically sustainable development.</p>
<b>Part II – Strategic Framework for Local Government in NSW</b>
<p>The Taskforce provided three proposals for the strategic framework for local government in NSW.</p> <p>Proposal 3.2.1 suggesting the elevation of IPR to form the central framework of the new Act received almost universal support. The Taskforce received constructive suggestions regarding how this proposal could be strengthened and improved. These included suggestions regarding:</p> <ul style="list-style-type: none"> <li>• how the IPR reporting regime could be streamlined and improved</li> <li>• the importance of strengthening the link between State and Local Government planning and regional planning; and</li> <li>• how IPR could be utilised to enable councils to earn autonomy, particularly in relation to the setting of council rates</li> </ul> <p>Responses to proposal 3.2.2. – Community Consultation and Engagement was generally positive with submissions providing valuable suggestions for improvement of the proposal and considerable support for the adoption of the IAP2 model of community engagement as an example of best practice. A number of proposals also suggested that the community engagement principles should align or be consistent with the Community Participation Charter proposed in the NSW Planning White Paper (2013).</p>

## Part II – Strategic Framework for Local Government in NSW—cont'd

The importance and value of local government being able to adopt the most appropriate forms of technology to support the services provided to their community was generally acknowledged. However, this support was balanced by recognition that, in adopting new technologies, it is essential that councils do not disenfranchise those members of the community who do not have ready access to, or the ability to use new technologies. The value of face-to-face communication and flexibility for councils to adopt the most appropriate technology for their purposes needs to be retained.

## Part III – Council Operations

The Taskforce discussion paper contained 18 proposals relevant to council operations and governance (3.3.1 – 3.3.18). Some proposals either endorsed the current provisions in the legislation (3.3.6 – Code of Conduct; 3.3.5 – Protection from Liability) or noted that the Independent Panel was examining the matter and accordingly consideration was deferred pending the outcomes of that review (3.3.4 – Formation and Involvement in Corporations and Other Entities; 3.3.16 – Water Management; and 3.3.17 – Tribunals and Commissions).

On balance, the workshops and written submission responses endorsed in principle and in their entirety the following proposals, or with only minor suggested improvements or changes: 3.3.2 – Meetings; 3.3.7 – Pecuniary Interest; 3.3.8 – Delegations; 3.3.12 – Public Private Partnerships.

The following proposals while generally supported in principle attracted most comment:

### 3.3.1 – Elections

Responses relating to this proposal were mixed. For example, while there was support for the use of postal voting and electronic voting, responses also indicated that these voting systems should be optional. There was some support for the abolition of wards but a majority supported their retention. There was considerable support for a single Elections Act for NSW and a mechanism for removing the need for by-elections when a casual vacancy occurs in the first year following an ordinary election. Use of a count back system received considerable support.

### 3.3.3 – Appointment and Management of Staff

While this proposal garnered significant support it also attracted considerable comment, particularly the proposals relating to approval of the council organisation structure and senior staff which attracted diametrically opposed views.

### 3.3.9 – Financial Governance

While supportive, many written submissions contained detailed suggestions on how the financial provisions of the Act could be improved, particularly those relating to rates and charges.

### 3.3.10 – Procurement

Many written submissions supported this proposal and contained constructive suggestions on how the proposal could be improved or strengthened. However, some submissions expressed concern regarding the removal of the tender threshold amount and the potential risks if procurement became too deregulated.

### 3.3.13 – Acquisition of Land

While this proposal was largely supported, some submissions raised concern that a requirement to include council plans to purchase specific property in Delivery Programs could result in the price of the property being inflated and limiting the flexibility of councils to undertake unexpected procurement.

### 3.3.14 – Public Land

Responses indicated that there is considerable support for the proposal to simplify the current processes and where possible, harmonise the management of council owned public land and council managed Crown Land. However, it was also evident that the new Act should continue to maintain adequate controls to ensure that public land is suitably protected so that councils are unable to dispose of valuable community assets without appropriate community consultation.

### 3.3.15 – Approvals, Orders and Enforcement

This proposal attracted considerable support and detailed commentary on possible improvements to the regulatory regime. Comments addressed issues such as rationalisation of provisions with other Acts; support for the retention of Local Approvals Policies and Local Orders Policies; support for review of monetary penalties; and ensuring that penalties are kept under regular review.

### Part I Guiding principles for a new Local Government Act

#### 3.0.0 Approach and Principles for the Development of the New Act

##### Commentary

Given the Taskforce terms of reference and responses received, the expectation is that the new Act should be written in modern, easy to understand language and, wherever possible, eliminate unnecessary red tape.

There is clear support for the new Act to be streamlined, simplified and logically designed to provide a clear and flexible framework within which the diverse local government sector can effectively operate.

Responding to the importance of streamlining, the Taskforce is recommending development of principles-based legislation and relocation of necessary prescription to regulation, codes or guidelines. A frequently expressed view was that the new Act should be more focused on outcomes rather than process and be about the “why” not the “how to”. However, in some areas this had to be balanced against the need for certainty and clarity in the legislation to reduce differing interpretation of provisions and consequent potential for increased litigation.

A common theme during the consultation process was that IPR should be given a more central place in the legislation. A new Act structured around IPR should be streamline and reduce the compliance burden on councils. This could be achieved through removal of processes currently duplicated in the Act while aligning roles, responsibilities and accountability to provide compatibility with the IPR framework. See also section 3.2.1 and other

recommendations in this report regarding strengthening of IPR.

##### 3.0.0 The Taskforce recommends

- (1) integrated planning and reporting form the central framework for the new Act providing local government with a robust strategic planning mechanism that is based on community engagement, expectations and aspirations, and financial responsibilities
- (2) a flexible, principles-based legislative framework, avoiding excessive prescription and unnecessary red tape, written in plain language and presented in a logical format. 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, regulations, codes and guidelines should be used
- (3) a more consistent approach be adopted to the definition, naming and use of regulatory and other instruments, noting that currently there is inconsistent use of mandatory and discretionary codes, guidelines, practice notes, discretionary guidelines and the like.



### 3.1.0 Structure and Elements of the New Local Government Act

**3.1.0 The Taskforce recommends** that the new Act is structured with the following elements:

#### **Part I - Structural Framework of Local Government in NSW**

- Purpose of Local Government Act – 3.1.1
- Role of Local Government – 3.1.2
- Guiding Principles – 3.1.2
- Legal Status of Councils (includes Establishment) – 3.1.3
- Roles and Responsibilities of Council Officials – 3.1.4

#### **Part II - Strategic Framework for Local Government in NSW**

- Integrated Planning and Reporting – 3.2.1
- Community Engagement – 3.2.2
- Performance of Local Government – 3.2.3

#### **Part III - Council Operations**

- Governance Framework – 3.3.1 – 3.3.8
- Financial Practices – 3.3.9 – 3.3.11
- Public Private Partnerships – 3.3.12
- Public Land – 3.3.13 – 3.3.14
- Regulatory Functions – 3.3.15 – 3.3.16
- Other functions

#### **Part IV - Tribunals and Commissions - 3.3.17**

#### **3.1.1 Purposes of the Local Government Act**

##### **Commentary**

There were comparatively few suggestions in the submissions for change or additions to the Purposes. It is the view of the Taskforce that a genuinely best system of local government should contain all the attributes in part three of this recommendation.

**3.1.1 The Taskforce recommends** that the Purposes of the Local Government Act be drafted as follows:

The purpose of this Act is to provide

- (1) a legal framework for the NSW system of local government in accordance with section 51 of the *Constitution Act 1902 (NSW)*
- (2) the nature and extent of the responsibilities and powers of local government
- (3) a system of local government that is democratically elected, interactive with and accountable to the community, and is sustainable, flexible, effective and maximises value.

### 3.1.2 Role and Guiding Principles of Local Government

#### Commentary

The importance that the Act clearly articulates the Role and Guiding Principles for local government was evident from the workshops and written submissions. Having considered the responses the Taskforce has amended the recommended Role and Guiding Principles for local government to replace the current Charter.

**3.1.2 The Taskforce recommends the inclusion of a new Role of local government and a set of Guiding Principles for local government as follows:**

#### Role of Local Government

The Role of local government is to provide local democracy, strategic civic leadership, stewardship and sound governance to achieve sustainable social, economic, environmental, health and wellbeing and civic engagement through:

- (1) utilising integrated planning and reporting
- (2) working in cooperative arrangements with the community, other councils, State and Commonwealth Governments to achieve and report outcomes based on community priority as established through integrated planning and reporting
- (3) providing or procuring effective, efficient and financially affordable economic assets, services and regulation
- (4) exercising democratic local leadership and inclusive decision-making
- (5) having regard to the long term and cumulative effects of its decisions
- (6) valuing local difference and system diversity
- (7) committing to the application of the Guiding Principles of local government

#### Guiding Principles of Local Government

Guiding Principles to be observed by local government are to:

- (1) provide elected community-based representative and participatory local democracy, and open and accountable government
- (2) foster and balance the needs, interests, social and economic wellbeing of individuals, diverse groups and community
- (3) adhere to the social justice principles of equity, rights, access and participation
- (4) encourage stewardship and facilitate sustainable, responsible management of resources, infrastructure and development
- (5) consider future generations by protecting, restoring and enhancing the quality of the environment to maintain ecologically sustainable development, reduce risks to human health and prevent environmental degradation
- (6) ensure sustainable management and that all decisions incorporate considerations of risk management and long-term sustainability
- (7) recognise the responsibility of other levels of government in the provision of local services while accepting that local choices should be made at the local level wherever possible under the principle of subsidiarity
- (8) achieve and maintain accepted best practice public governance and administration, and act fairly, responsibly, ethically, transparently and in the public interest
- (9) optimise technology, and foster innovation and continuous improvement.

### 3.1.3 Constitution of Councils

#### Commentary

The Taskforce received some feedback that the legal status of councils should be returned from being a “body politic” to a “body corporate”. In the submissions the view was expressed that councils as a body politic are unable to apply for construction work on Australian Government funded projects as they are not corporations. However, no firm evidence was provided to support this view. The Taskforce considered the submissions and has formed the view that at this time there is no compelling reason to recommend that the legal status of councils is changed.

**3.1.3 The Taskforce recommends** that the legal status of councils remains as a “body politic”.

### 3.1.4 Roles and Responsibilities of Council Officials

#### Commentary

The Taskforce recognises the importance of the Act clearly defining the role of the elected councillors, the mayor and the general manager. The Taskforce acknowledges that under its terms of reference the Independent Panel is reviewing this matter. Accordingly the Taskforce has not considered this topic in detail.

**3.1.4 The Taskforce recommends** following consideration of the final report of the Independent Panel, the roles and responsibilities of mayors, councillors and general managers are reviewed to ensure they align with the requirements of the strengthened IPR framework (see section 3.2.1 below) and any recommendations of the Independent Panel that may be adopted by the State Government.

### 3.2.1 Integrated Planning and Reporting

#### Commentary

Integrated planning and reporting (IPR) was introduced into the Act in 2009 providing a coherent strategic planning framework for local government in NSW. It is clearly evident to the Taskforce that IPR is very successful and that it is strongly supported by the local government sector.

IPR provides the foundation for stronger, more effective local government, facilitating improved community engagement, strategic planning and resource management to deliver priority community outcomes.

It also provides the framework for the role of local government and its relationship to the community and to the State.

**Diagram 1 – The IPR Framework from the Division of Local Government 2013 – Integrated Planning and Reporting Guidelines for Local Government in NSW**



The IPR framework facilitates:

- accountability to communities, supported by effective community engagement and reporting
- a stronger partnership between the State and Local Government
- viable and sustainable councils, better able to adapt to changing circumstances
- greater autonomy, and responsibility for improved performance
- improved management of actual or potential risk to outcomes, supported by an appropriate assurance framework.

The IPR framework recognises that most communities share similar requirements and aspirations including a safe, healthy and pleasant place to live, a sustainable environment, opportunities for social interaction, opportunities for employment and reliable infrastructure. Communities respond differently to these needs. IPR also recognises that council plans and policies should not exist in isolation and that they are interconnected.

It enables councils to integrate their various plans, policies and strategies and understand how they interact and provide the leverage to secure good outcomes for their communities.

It is the view of the Taskforce that the primary elements of the new Act should establish:

- the local government system, principles and framework
- the accountability and reporting framework
- the performance framework
- the monitoring and intervention framework

IPR currently provides a basis for the first two elements. However, as a consequence of IPR being a 2009 amendment to the Act, this framework is not consistently supported by other parts of the Act. The Taskforce therefore proposes that the new Act be less prescriptive and reflects a greater level of local autonomy, while remaining consistent with the intent of IPR.

In addition to the recommendations specific to IPR, this report contains recommendations intended to support the Taskforce recommendation to establish the centrality of IPR in the new Act and design an Act reflecting the principles and practice of IPR.

A number of the Taskforce recommendations are inter-related to and inter-dependant on IPR including:

- Appointment and management of staff – section 3.3.3
- Delegations – section 3.3.8
- Financial management – section 3.3.9
- Procurement – section 3.3.10
- Capital expenditure – section 3.3.11
- Acquisition of land - section 3.3.13
- Public land – section 3.3.14
- Approvals, orders and enforcement – section 3.3.15

The Taskforce has recommended that the IPR sections of the Act are moved to the front of the new Act and follow the purpose, role and principles sections to elevate its importance and create a more logical sequence in the Act.

The Taskforce emphasises that its recommendation for strengthening IPR does not imply expanding the detail or level of prescription, but may involve removing some prescription to improve the flexibility for councils and better reflect the intent of IPR. The Taskforce recommends that the IPR provisions are reviewed and simplified to increase flexibility for councils to deliver locally appropriate IPR.

Making IPR the centrepiece of the new Act should strengthen the strategic role of councillors as leaders of their local community.

The Taskforce makes the following recommendations in relation to IPR.

### 3.2.1 The Taskforce recommends

- (1) elevating IPR to form the central framework of the new Act and the primary strategic tool that enables councils to fulfil their civic leadership role and deliver infrastructure, services and regulation based on community priorities identified by working in partnership with the community, other councils and the State Government
- (2) strengthening and embedding the principles of IPR in the Act more broadly, setting minimum standards in the Act and defining process through regulation, codes and/or guidelines
- (3) removing duplication from other parts of the Act, where the principle or practice is already captured in the IPR legislation or guidelines
- (4) ensuring the legislation facilitates a strategic leadership role for councils in their local communities
- (5) moving sections of the Act to other legislation, in order to create an Act that better reflects the strategic role of councils and the framework that ensures and enables that role. The Taskforce proposes the outline displayed in Table 6 as the chapter structure of the new Act
- (6) simplifying the provisions of IPR to increase flexibility for councils to deliver IPR in a locally appropriate manner.

**Table 6:** The Taskforce recommends the following outline for the overall structure of the new Act

<p><b>Part I –Structural Framework of Local Government in NSW</b></p> <p><u>Purpose of the Act</u></p> <p><u>Role of Local Government</u></p> <p><u>Guiding Principles</u></p> <p><u>Roles and Responsibilities of Council Officials</u></p> <p><b>Part II – Strategic Framework for Local Government in NSW</b></p> <p><u>Integrated Planning and Reporting</u></p> <ul style="list-style-type: none"><li>- Community Strategic Plan</li><li>- Community Engagement Strategy</li><li>- Delivery Program</li><li>- Resourcing Strategy</li><li>- Performance framework</li></ul> <p><b>Part III – Council Operations</b></p> <p><u>Governance Framework</u></p> <ul style="list-style-type: none"><li>- Elections [but recommend for transfer to separate Act]</li><li>- Conduct</li><li>- Pecuniary Interest</li><li>- Councillor remuneration</li><li>- Meetings, inc. decision making</li><li>- Delegations</li><li>- Appointment and Management of Staff</li><li>- Audit</li><li>- Protection from Liability</li></ul> <p><u>Financial Practices</u></p> <ul style="list-style-type: none"><li>- Financial Governance</li><li>- Procurement</li><li>- Capital Expenditure</li><li>- Insurance</li></ul> <p><u>Public Private Partnerships</u></p> <p><u>Use of resources</u></p> <ul style="list-style-type: none"><li>- Asset Management including public land management &amp; acquisition</li><li>- Rates</li><li>- Fees and charges</li><li>- Grants</li><li>- Loans</li><li>- Investments</li></ul> <p><u>Regulatory Functions</u></p> <ul style="list-style-type: none"><li>- Approvals and Orders</li><li>- Regulatory Powers (such as entry onto land, acquisition of land)</li><li>- Offences and Enforcement</li><li>- Water Management</li></ul> <p><u>Constitution of Local Government</u></p> <ul style="list-style-type: none"><li>- Regional Strategic Organisations of Councils including formation of corporations</li><li>- County Councils</li></ul> <p><u>Regulation of Local Government (e.g. State interventions/inquiry powers etc.)</u></p> <ul style="list-style-type: none"><li>- Administrator</li><li>- Investigations</li><li>- Inquiries, Surcharging</li><li>- Councillor misconduct</li><li>- Proceedings against councils</li><li>- Council interaction with the State</li></ul> <p><b>Part IV - Tribunals and Commissions</b></p>
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### 3.2.2 Community Engagement

#### Commentary

A primary theme from the Taskforce discussions and the submissions received was that there should be consistency of terminology concerning community engagement. While the main terms used have been informing, consultation, involvement, collaboration, participation, empowerment and engagement, it is the Taskforce view that the traditional local government approach of “top-down” informing and consultation goes only part way to genuine commitment to community participation and engagement.

Engagement is a broader term that affords the opportunity to inform, collaborate and empower. The Taskforce recommendations under the Role of Local Government endorse the importance of local government representatives securing a sound understanding of community views as a component of the decision making process.

The Taskforce is aware that the NSW Government Planning White Paper proposes that every planning authority will prepare a Community Participation Plan but that “*Councils will not be required to prepare a separate Community Participation Plan if their community engagement strategy (made under the Local Government Act) includes*” all the matters articulated in the White Paper “*and other requirements in the legislation*”(p.48). Should the Planning White Paper proposals relating to community participation be adopted the community engagement sections of the new Local Government Act should be drafted so as to align with any adopted planning proposals but should include the following Taskforce recommendations.

#### 3.2.2 The Taskforce recommends

- (1) councils prepare the most locally appropriate and flexible community engagement strategy guidelines. This will provide communities the opportunity to engage, through the following and other locally appropriate principles, and allow a flexible framework for continuing community engagement. The principles for such strategy will:

- a. include commitment to the community being at the centre of local government using ongoing engagement which ensures fairness in the distribution of resources; rights are recognised and promoted; people have fairer access to the economic resources and services essential to meet their basic needs and to improve their quality of life; and people have better opportunities to become informed and involved especially through use of technology
- b. consider and understand 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 engagement and the scope of the decision(s) to be taken
- c. consider and understand that interested persons should have adequate time and reasonable opportunity to present their views to the council in an appropriate manner and format
- d. ensure that the views presented to the council will be given due consideration
- e. consider and understand that councils, in exercising their discretion as to how engagement will proceed in any particular circumstance, will have regard to the reasonable expectations of the community, the nature and significance of the decision or matter, the costs and benefits of the consultation process, and to intergenerational equity
- f. arrange flexible special engagement procedures in particular instances
- g. consider all groups, even though it may be difficult to reach every diverse community group, and some groups will choose not to engage.



### 3.2.3 Performance of Local Government

#### Commentary

The Taskforce understands that the Independent Panel is examining performance aspects of local government and accordingly has deferred consideration of any legislative matters pending the outcome of this review.

However, submissions were invited on whether the performance of local government and its constituent entities should be further monitored and reported. Some submissions addressed this issue and generally supported a single reporting regime linked to the IPR framework, provided such a regime did not impose an additional compliance burden with little benefit.

It is the view of the Taskforce that a performance system linked to IPR should be developed that enables comparison of relative performance of councils and identification of significant matters that some councils may need to address. The Taskforce considers that the performance system should also include self-assessment of the performance of the governing body of council.

#### **3.2.3 The Taskforce recommends that a performance system is developed that is linked to IPR and includes the following elements:**

- (1) a standard series of measures that can compare the performance of councils across the State
- (2) an analysis of the performance measures results so that councils can identify the actions required to elevate performance
- (3) a self-assessment of the performance of the governing body on an annual basis
- (4) in lieu of an end of term report, councils provide a mid-term report as to progress with the Community Strategic Plan.

### 3.2.4 Technology

#### Commentary

It was evident to the Taskforce that it is important to ensure the Act does not limit the ability of councils to use the most appropriate technology necessary to support the efficient, effective and economic delivery of services to the community. As examples, the Taskforce heard that the efficient service and receipt of rates and charges notices is hindered by the current prescriptiveness of the Act and imposes a barrier to ratepayers wishing to receive rate notices electronically.

There are various references throughout the Act and regulations to specific requirements for publishing notices and staff recruitment advertisements to appear in newspapers which are costly and restrictive. Equally it was evident that it is important councils are afforded flexibility to choose the form of technology they utilise to ensure that they remain accessible to all members of their community.

#### **3.2.4 The Taskforce recommends**

- (1) as a general principle the Act should enable optimal, flexible and innovative use of technology by councils to promote efficiency and enhance accessibility and engagement for the benefit of constituents
- (2) the Act should allow each council to determine the most appropriate use of technology taking into account the Guiding Principles of local government and community engagement through the IPR framework.

## Part III – Council Operations

### 3.3.1 Elections

#### Commentary

In reviewing election arrangements the Taskforce has had regard to the principles of accessibility, transparency, security and efficiency.

Regarding voting methods, the Joint Standing Committee on Electoral Matters (JSCEM) in its 2012 report recommended amendments to allow for optional universal postal voting. The NSW Electoral Commissioner supports use of either universal postal voting or attendance voting together with iVote as a way to limit council costs.

The introduction of optional universal postal voting was well supported in submissions. Victoria and Western Australia confer discretion on councils to decide the method of conducting elections. Cost savings from universal postal voting of between 15 and 20 per cent compared to attendance voting has been reported. There is almost a 90 per cent take up rate for universal postal voting in those States.

The Taskforce is satisfied that councils are best placed to choose whether to use universal postal or attendance voting. Councils can satisfy themselves as to cost savings, efficiencies and voter acceptance when reaching a decision as to the appropriate method of voting. The Taskforce accepts that “one size does not fit all” and notes that councils already have responsibility for deciding whether they will manage the election in-house or contract out the process.

Where a council chooses to use attendance voting then the legislation should give councils the discretion to set the period for pre-poll voting between 7 and 14 days reflecting the feedback received. There was strong interest expressed by those who made submissions for the early adoption of technology assisted voting, or iVoting as an alternative to attendance voting. Local government could be used as a pilot project for early introduction of electronic voting to reduce costs and potentially improve voter convenience and accessibility.

The Taskforce recommends that legislation provides councils the choice of attendance voting or universal postal voting and allow other means, such as technology assisted voting to increase efficiency, voter participation and reduce costs, while maintaining security and transparency.

The Taskforce considers that the provision of information on specific policy and skills capacity of candidates on their candidate information statements while welcome should not be made mandatory. The Taskforce recommends that councils conducting universal postal elections should be required to provide with the ballot papers a booklet setting out the information provided on candidate information sheets to inform voters.

The Taskforce in its Discussion Paper raised the issue of mechanisms to end the need to hold costly by-elections when a vacancy in civic office occurs in the first year following an ordinary election.

The Taskforce recommends that a counting system be adopted to fill vacancies occurring in the first year following an ordinary election whereby the unelected candidate who had the next highest number of votes is appointed to fill the vacant position. This would be achieved by extending the count by two places.

Furthermore councils should be required to fill vacancies occurring after the first year following an ordinary election and up to 18 months prior to the next ordinary election by compulsory postal voting. Where a casual vacancy occurs in the last 18 months before an ordinary election the council can resolve to apply to the Minister to dispense with the holding of a by-election.

In its 2012 report the JSCEM recommended that there should be one Elections Act for NSW State elections and the regulation of campaign finance and expenditure.

There was substantial support in submissions received that a single Elections Act should also include all legislation governing local council elections. The Taskforce recommends the transfer of local government elections law to a new single Elections Act.

Where mayors are elected by councillors there is good support for a change from one year to two year terms. A two year term will allow for stability.

The Taskforce sought proposals to improve the electoral enrolment process and maintenance of the non-residential rolls for all council areas other than the City of Sydney. The Taskforce has concluded that there is no strong case to change the present enrolment process and maintenance of the non-residential rolls for council areas with the exception of City of Sydney. For a discussion of election issues particular to Sydney City Council see Chapter 4.

The Taskforce notes that it has not had the opportunity to consider the report of the JSCM into the Conduct of the 2012 Council Elections.

### 3.3.1 The Taskforce recommends

- (1) councils to have the option of using universal postal voting or alternative means of voting such as technology assisted voting where feasible as a means of increasing efficiency and voter participation and reducing council costs
- (2) the Act be drafted so as to enable the adoption of new technologies such as technology assisted voting when feasible to do so
- (3) include mechanisms for removing the need for by-elections, when a vacancy occurs either in the first year following an ordinary council election or up to 18 months prior to an ordinary election as a means of avoiding the holding of costly by-elections
- (4) a counting system should be adopted as an appropriate mechanism for filling vacancies that occur within the first year following an ordinary election whereby the unelected candidate who had the next highest number of votes be appointed to fill the vacant position
- (5) councils to be required to fill vacancies occurring after the first year following an ordinary election and up to 18 months prior to the next ordinary election by the postal voting method

- (6) where universal postal voting is used for any election, a candidate information booklet is to be included in ballot packs as a way of increasing voter knowledge of the candidates
- (7) the transfer of local government elections law to a single new Elections Act to consolidate all State and local government election provisions along with the regulation of campaign finance and expenditure
- (8) the term of mayors elected by the councillors to be extended from 1 year to 2 years.

### 3.3.2 Meetings

#### Commentary

The proposal that the provisions relating to council meeting practice be consolidated into a generic mandatory Code of Meeting Practice that can be supplemented to meet local requirements received almost universal support.

The Taskforce received feedback on the following specific matters relevant to meetings:

- that as general principle councillors should still be required to attend council meetings in person. However in emergency situations such as natural disaster where travel to the council chambers is not possible or dangerous councils should have the option of resolving that councillors may attend the meeting electronically
- caution should be exercised to ensure that in using technology the systems are adequate to maintain proper meeting protocol and allow appropriate community access to the meeting.

### 3.3.2 The Taskforce recommends that the provisions relating to council meetings be:

- (1) 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

- (2) modernised and unnecessary prescription and red tape removed
- (3) designed to facilitate councils utilising current and emerging technologies in the conduct of meetings and facilitating public access
- (4) flexible to enable remote attendance through technology at council meetings in emergencies such as natural disasters.

### 3.3.3 Appointment and Management of Staff

#### Commentary

The current regulatory approach is a mix of broad policy statements (particularly in relation to organisation structure) as well as more prescriptive procedural requirements (e.g. merit based appointments, advertising of positions).

This approach does not align with the Taskforce recommendations of a streamlined Act that minimises unnecessary red tape, is principles-based and has IPR as its central framework.

In the Act there are a number of sections that:

- are currently outside the IPR framework, that should be integrated into IPR e.g. organisation structure and equal employment opportunity
- are operational matters and as such should be left open to each council to manage e.g. reporting on contractual conditions, appointment of public officer
- are industrial in nature and should be covered under the relevant industrial legislation e.g. staff appointments and advertising of vacancies

It is the view of the Taskforce that strategic decisions relating to workforce planning should be made within the context of IPR. Other employment matters currently contained within the Act that are operational in nature should be left open to each council to determine.

### 3.3.3 - The Taskforce recommends

- (1) the strategic responsibilities of the council be clearly separated from operational responsibilities and be aligned with IPR by:
  - the council being responsible:
    - for determining those services and priorities required by the community, and for providing the necessary resources to achieve the council's Delivery Program; and
    - on the advice of the general manager, the council determine the organisation structure to the level that directly reports to the general manager
  - the general manager being responsible:
    - for determining the balance of the organisation structure; and
    - for recruiting all staff with appropriate qualifications to fulfill each role within the structure. The general manager will consult with council regarding the appointment and dismissal of senior staff
- (2) positions meeting the criteria as senior staff be appointed under the prescribed standard contract for senior staff, identified as senior staff positions within the organisation structure, and remuneration be reported in the council's annual report
- (3) each council to determine arrangements for regulatory responsibilities other than under the Act
- (4) 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
- (5) that the maximum term allowable for temporary staff appointments be extended from 1 year to 2 years.

### 3.3.4 Regional Strategic Organisations of Councils and Formation and Involvement in Corporations

#### Commentary

The ability of councils to enter into regional strategic collaboration activities is essential:

- for the long term sustainability of local government in NSW; and
- for the facilitation of efficient and effective long term regional planning.

The provisions in the Act to support regional collaboration between councils are limited. Currently Regional Organisations of Councils (ROCs) are the main vehicle for this purpose. As part of its review the Independent Panel is considering models that could be adopted for this purpose.

It is evident to the Taskforce that the provisions in the Act are inadequate. The Taskforce met with representatives of Hunter Councils and considered the strategic regional cooperation model used by that group of councils. The Taskforce sees considerable merit in the model for providing a governance structure appropriate to facilitate regional strategic collaboration between councils across NSW.

The Taskforce suggests that consideration is given to the adoption of a similar model for NSW councils having the following benefits:

- it supports a strategic regional role for councils
- it supports capacity building among member councils
- it provides an appropriate platform for genuine and binding partnerships between the State and local governments in relation to regional and sub-regional service delivery
- it separates regional strategic and advocacy functions from regional shared services and resources and supports use of alternative service delivery models
- it supports shared services delivery.

The Taskforce suggests that a similar model of regional collaboration between councils is adopted and based on the following principles:

- facilitation of appropriate and strong regional governance and leadership
- contribution to efficient and effective State-local relations in the areas of regional and sub-regional strategy and planning, economic development, infrastructure provision and service delivery
- facilitation of regional and local strategic capacity building
- facilitation of resource sharing, shared services and joint service delivery by councils
- appropriate separation of regional strategic and advocacy functions from regional resource sharing, shared services and joint service delivery functions
- enhanced role and status of mayors.

If this model is adopted new provisions should be included in the Act to:

- establish the roles to be undertaken at a regional or sub-regional level by councils in collaboration
- provide and recognise the formation of a regional entity through groupings of councils to fulfil the regional and sub-regional roles
- establish a basis for agreement between regional entities and the State Government in relation to those regional roles.

The new Act and regulations should provide for:

- the formation and recognition of a regional statutory entity by councils
- membership of the regional statutory entity to comprise the mayors of the region's councils. The entity to be known as the *Regional Council of Mayors*
- the role of the *Regional Council of Mayors* in relation to State Agency regional and sub-regional strategy and decision making in the areas of:
  - regional and sub-regional strategy and planning
  - economic development
  - infrastructure provision
  - service delivery

- a role for the *Regional Council of Mayors* in relation to the development and adoption of the State’s Regional Action Plans.

It would also be appropriate to develop protocols for:

- strategic regional collaboration between State agencies and the *Regional Council of Mayors*
- the authority and means by which the *Regional Council of Mayors* may develop and formulate regional and sub-regional strategic positions
- the accountability to the *Regional Council of Mayors* of any resource sharing, shared services or joint service delivery entity operated by or through the Regional Council of Mayors.

The Taskforce understands that the Hunter Councils strategic cooperation model proposes that the Council of Mayors be able to create service entities established as companies limited by guarantee under the *Corporations Act 2001 (Cwth)*. As such the operations of such entities may not be covered by the Act. Consequently they would not be subject to the same level of scrutiny, accountability and transparency as councils.

Accordingly the Taskforce does not recommend that such entities be established without the consent of the Minister. It is the view of the Taskforce that the provisions of the Act relating to the formation of corporations and other entities should continue.

### 3.3.4 The Taskforce recommends

- (1) the Act include a mechanism enabling councils to form statutory entities to undertake regional strategic collaboration activities. The Taskforce is of the view that, in place of Regional Organisations of Councils, a model similar to that developed by the Hunter Councils – Council of Mayors provides a suitable mechanism for achieving regional strategic collaboration, with the exception of Western NSW. ROCs could transition to a Council of Mayors to broaden joint collaboration between councils
- (2) the provisions of the Act relating to the formation of corporations and other entities should continue.

### 3.3.5 Protection from Liability

#### Commentary

The Taskforce is satisfied that liability limitations and protections currently contained in the Act are working well. Suggestions were received for additional exemptions to be conferred on councils and their employees as follows:

- natural hazards e.g. geotechnical hazard
- where council conducts work in response to emergencies to prevent an immediate risk to public health or environmental harm
- add a definition of “good faith”

While the Taskforce has not been presented with compelling evidence for these changes, there may be merit in conducting a further review of this matter.

**3.3.5 The Taskforce** does not propose changes to the liability provisions of the Act.

### 3.3.6 Code of Conduct

#### Commentary

The Taskforce did not propose any changes to the conduct provisions of the Act and recommends that other than ensuring the conduct provisions are located in an appropriate section of the new Act and that reporting requirements made consistent, the provisions should be transferred unchanged to the new Act.

**3.3.6 The Taskforce** does not propose changes to the conduct provisions of the Act.

### 3.3.7 Pecuniary Interest

#### Commentary

The Taskforce proposal that the pecuniary interest provisions of the Act be reviewed to ensure that they are written in plain language, easily understood and unnecessary red tape removed, was largely supported. Issues were raised which the Taskforce believes should be taken into consideration in any review of these provisions including:

- the definition of “designated person” should be revised given the Code of Conduct obligations
- privacy rights should be balanced against the publication and public access to pecuniary interest returns.

#### **3.3.7 The Taskforce recommends**

- (1) the pecuniary interest provisions be reviewed to ensure they are written in plain language, easily understood and with unnecessary red tape removed
- (2) consideration be given to utilising technology to assist with the submission and maintenance of pecuniary interest disclosures and to facilitate appropriate access to this information, while ensuring that privacy rights are protected.

### 3.3.8 Delegations

#### Commentary

For the efficient operation of councils it is essential that the council can delegate functions. Councils have a broad range of functions that may be exercised under delegation.

The Act expressly prevents the council from delegating a number of functions including the appointment of a general manager, the making of a rate, the fixing of fees and charges, the borrowing of money, voting of money for expenditure, compulsory acquisition of land, acceptance of tenders, classification and reclassification of public land, granting of a leave of absence to the holder of a civic office and functions that can only be exercised by way of a resolution of the council.

The Act also limits the power of councils and county councils to delegate and sub-delegate regulatory functions to a person or entity other than a committee of the council or county council, an employee of the council or county council, to a county council by a county council or to a council by a county council.

The current legislative approach of the broad power of delegation with a number of exceptions strikes an appropriate balance and has not been raised as a matter of concern by councils.

However, issues have been identified in relation to some of the exceptions including:

- acceptance of tenders - councils are required to call for tenders for contracts for the provision of goods and services exceeding an estimated expenditure of \$150,000. This results in contracts of an operational nature, that could be dealt with at the operational level, having to come before the council for acceptance
- acceptance of tenders involving more than one council - this exception impacts on the ability of councils to make purchases collaboratively either through regional strategic alliances or jointly with another council. If councils either jointly or through regional strategic alliances decide to make a collaborative purchase,

- a report has to go to each of the participating councils, all of which must resolve to accept the tender
- a decision to provide minor financial assistance to community groups. It is suggested that this provision is not reflective of the risk associated with these decisions
- the restriction preventing the delegation or sub-delegation of regulatory functions to another council which prevents councils from working collaboratively, for example by outsourcing regulatory functions to an adjoining council.

It is proposed that the current legislative approach of enabling a broad power of delegation, with a number of exceptions, be retained.

However it is recommended that delegations are reviewed to ensure that they are written in plain language, streamlined, and remain appropriate, taking into account the other recommended changes to the Act.

It is the view of the Taskforce that it should be left to councils to determine the functions that it is most appropriate to delegate to support the efficient and effective operation of council, and that the amount of legislative prescription should be minimised.

### 3.3.8 The Taskforce recommends

- (1) that the provisions of the Act relating to delegations be reviewed to ensure that 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
- (2) that the exceptions to delegations of an operational nature not be carried forward to the new Act, ensuring the council focuses on strategic decisions, consistent with IPR. These would include for example:
  - acceptance of tenders
  - provision of minor financial assistance to community groups

- delegation of regulatory functions to another council or shared services body.

### 3.3.9 Financial Governance

#### Commentary

The financial governance of councils is largely regulated by two Parts within the Act:

- IPR prescribes that councils have certain financial documents such as a Resourcing Strategy that includes long-term financial planning and asset management planning
- financial management provisions relating to council's funds, accounting records, financial reporting and auditing.

The financing of councils, including fees and charges and rating are dealt with in other parts of the legislation. The Taskforce comments on fees in section 3.3.15 below but not the rating provisions as this is being examined by the Independent Panel. However, the Taskforce received a significant number of submissions highlighting issues with the current rating regime. A further detailed review is considered to be required of rating and finance issues once a fundamental framework arising from Independent Panel recommendations has been considered and adopted by the State Government.

The current financial governance and management provisions are prescriptive, focus on process and are not always clearly aligned with IPR or the approach adopted by the Taskforce for a streamlined, principles based Act that minimises prescription. The Taskforce is recommending that financial and resource planning and reporting should be included within the IPR framework as part of a council's Resourcing Strategy.

Supporting the Guiding Principles for Local Government recommended by the Taskforce (see section 3.1.2 above), the Taskforce recommends that the new Act include the following principles for financial governance requiring that:

- councils have a structure to independently verify and safeguard the integrity of financial reporting



- promote timely and balanced disclosure of all material matters
- establish a sustainable system of risk oversight, management and internal control.

The Taskforce recommends that the financial management principles are underpinned by a comprehensive financial governance framework including the following elements:

- (1) financial management governance and oversight - setting out the processes by which the council is directed, controlled and held to account including clear financial governance policies, risk management requirements and audit functions
- (2) financial management structure, systems, policies and procedures - setting standards to achieve sound systems of internal control to support financial management
- (3) financial management reporting - that assists councils in measuring and managing performance and ensures financial management reporting is consistent with statutory reporting obligations. This should be linked to IPR reporting requirements.

The Taskforce recommends that legislation contain the financial governance principles and the minimum expectation for financial management while minimising prescription. The legislation should be supported by appropriate regulatory instruments.

### 3.3.9 The Taskforce recommends

- (1) there be greater focus on principles and definition of financial systems and minimum standards in the new legislative framework and for assimilation of financial governance with the IPR requirements
- (2) there be a realignment of the regulatory focus under the legislative framework towards systems and risk management rather than process prescription
- (3) complementing the Guiding Principles of local government, the new Act should articulate a set of financial (or corporate) governance principles that align more effectively with the principles

- and objectives of IPR, especially in relation to stewardship of resources and accountability. For example:
- a. safeguarding integrity in financial reporting
  - b. making timely and balanced disclosures
  - c. recognising and managing risk
- (4) minimum expectations be prescribed by legislation or sub-regulatory instrument. A potential framework is:
    - a. financial management governance and oversight
    - b. financial management structure, systems, policies and procedures
    - c. financial management reporting
  - (5) financial statement requirements be included under IPR annual reporting requirements
  - (6) a further review of rating and finance matters be undertaken as required after the Independent Panel recommendations are determined by the State Government.

### 3.3.10 Procurement

#### Commentary

The current regulatory approach is prescriptive and restricts councils from taking a strategic, flexible method to procurement.

Issues with the current procurement framework identified by the Taskforce include:

- the tendering threshold of \$150,000 is considered too low
- lack of accountability for procurement below the threshold, or where tendering is not required
- councils are not able to participate in State Government policy objectives of supporting registered Australian Disability Enterprises by being able to procure directly from such organisations without having to go to tender
- procurement is not incorporated into a broader system of financial management
- inefficiencies arising from prescriptive processes that restrict the use of technology and facilitate a more strategic approach to procurement

- delegation provisions constrain councils from engaging in regionally-based procurement, while councils' inability to delegate tenders requires council approval for operational expenditure.

Recognising the Taskforce objective of developing principles-based legislation it recommends the following procurement principles for the new Act and regulations which are consistent with the NSW State system of procurement, and adapt important principles from local government legislation in other States.

- a. Accountability and reporting requirements
  - align council's procurement framework with IPR
  - annual reports against council's IPR objectives, and significant procurement above a certain value
  - delegations, including removing restrictions on delegation of the acceptance of tenders (see also section 3.3.8).
- b. Value for money including consideration of:
  - the goal and purpose of the procurement having regard to the council's strategic objectives as identified through IPR
  - development of a competitive local business, industry, regional or local preference policy
  - considerations of materiality and whole of life costs
  - regularly review rolling contracts or engagements.
- c. Probity, fairness and risk management, including:
  - a transparent, fair and ethical process for all procurement irrespective of value
  - risk management and setting appropriate internal controls and monetary thresholds having regard to risk.
- d. Efficient and effective competition to require councils to implement efficient

and effective competitive processes for procurement that is appropriate to the scale and scope of the procurement, having regard to actual value.

Allow exceptions to the effective competition requirement:

- where it is not reasonably practicable for example, where tendering would not produce a satisfactory result, land purchase, sale, lease or licence; for employment contracts; in emergencies; for environmental upgrade agreements; election services; banking; borrowing or finance services; and exemptions from tendering under other legislation. Furthermore, exemptions could be included for EPAA planning agreements, public auctions, insurance and other council-provided services
  - other exemptions such as procurement from Commonwealth and State Government panel contracts, other prescribed entities, and registered Australian Disability Enterprises.
- e. Market assessment, including whether council should provide services or approach the market.

The Taskforce recommends that the legislative framework include default procurement requirements, with minimal process requirements that are contemporary, reasonably efficient and flexible, and non-technology specific and be prescribed in regulation or a mandatory code.

An option would be to apply to councils the NSW Procurement Board requirements for agencies seeking accreditation, or to prescribe a procurement framework based thereon. Alternatively the monetary tendering threshold could be set on the basis of risk using as its basis the materiality of the value of the proposed procurement.

### 3.3.10 The Taskforce recommends

- (1) the adoption of central principles of procurement combined with a medium level of regulation to ensure support of the following principles:
  - a. accountability
  - b. value for money
  - c. probity, equity, fairness and risk management
  - d. efficient and effective competition
  - e. market assessment
- (2) main considerations for each principle be contained in the Act or regulations, with further considerations contained in guidelines or a mandatory code
- (3) a council's procurement framework be consistent with its IPR framework
- (4) rather than the legislation setting a monetary threshold, a more flexible principles-based approach be established to enable councils to determine their threshold based on risk assessment of the proposed procurement and the procurement principles
- (5) regulation of procurement support councils entering into collaborative procurement arrangements and utilising technologies to assist with efficient, effective and economic procurement processes that are accessible to all relevant stakeholders and are fair, open and transparent
- (6) a regulation or code to express councils' default procurement framework
- (7) councils be qualified to adopt a more strategic approach through "earned autonomy" whereby:
  - a. the Division of Local Government may exempt a council from compliance with a requirement under the regulation or code where it is satisfied that a council's procurement framework is consistent with the procurement principles; and
  - b. qualification for a council's earned autonomy may be through an accreditation process or by council's development and diligent maintenance of policies

and practices that are consistent with requirements issued by the Division of Local Government or other oversight entity. Qualification by accreditation is preferred as this should increase the accountability of councils to the community.

- (8) councils continue to be able to take advantage of purchasing from Commonwealth and State Government procurement panels and State Government policies which afford exemption from tendering obligations such as when purchasing from registered Australian Disability Enterprises.

### 3.3.11 Capital Expenditure Framework

#### Commentary

Responses to this proposal were almost entirely supportive. A number of submissions contained useful suggestions on how the proposal could be implemented or improved. Some submissions suggested that NSW Treasury policies and guidelines provided valuable guidance on capital expenditure that could be readily applied to local government. The Taskforce recognises the vital importance of accounting for whole of life costs.

The use of risk management was advocated and the view was expressed that any framework should be sufficiently flexible to meet the individual needs of councils and not result in more regulation. Submissions suggested that the capital expenditure framework should be incorporated into IPR to ensure that the implications of major capital projects are assessed and reporting processes streamlined.

### 3.3.11 The Taskforce recommends

a capital expenditure and monitoring guideline be developed that integrates with the IPR framework and enables the appropriate management of risk by councils. This guideline should be tailored to risk levels, including significance of the project, materiality and whole of life costs, and not based on arbitrary monetary thresholds or procurement vehicles.

### 3.3.12 Public Private Partnerships

#### Commentary

This proposal received considerable support. It was acknowledged that high risks associated with Public Private Partnerships (PPPs) justified their regulation. The proposal that PPP's be considered for inclusion in the IPR framework was also supported as a means of streamlining the process and improving accountability and transparency.

Being often high risk, sophisticated financial instruments the Taskforce holds the view that PPPs should continue to be subject to regulation.

#### 3.3.12 The Taskforce recommends

- (1) that PPP projects continue to be subject to regulation due to the significance of the risks involved
- (2) aspects that could be streamlined or simplified be identified and mechanisms for ensuring PPPs be considered for inclusion in the IPR framework.

### 3.3.13 Acquisition of Land

#### Commentary

There is strong support for councils to adopt a policy through the IPR process on acquisition of land, including by compulsory acquisition, which is in accord with proposed land purchases being identified through the council's Delivery Program.

Any requirement to link a specific compulsory acquisition to the IPR process should relate to identification or demonstration of how the acquisition will support achievement of a 'key outcome' rather than the need to refer to a specific property for acquisition. Individual parcels of land need not be identified as this could inflate their price above market value. There should also be sufficient flexibility in the IPR process to continue to facilitate acquisition of land where an opportunity to obtain an important public asset arises.

Several submissions suggested the introduction of a streamlined system for the compulsory

acquisition of small non-significant parcels of land to reduce administrative costs. Furthermore, in order that councils may determine whether to proceed with land acquisition, determination of the value of the land early in the process should be possible.

It was also suggested that to quicken processes and reduce costs the decision for final approval of a compulsory acquisition proposed by council should no longer rest with the Minister for Local Government and the NSW Governor but instead, reside with the Chief Executive of the Division of Local Government. The Taskforce notes that a New Zealand acquisition scheme enables councils to approve compulsory acquisitions from a list of core functions.

The Taskforce is aware that any streamlining of the present system would require substantial change to the processes of the *Land Acquisition (Just Terms Compensation) Act 1991* (LA(JTC)A) which underpin the Local Government Act land acquisition regime. The processes for the compulsory acquisition of land under the LA(JTC)A apply to both councils and State Government agencies so that changes would need to be a matter for examination by State Government.

A few submissions challenged the current restrictions on councils' ability to re-sell compulsorily acquired land. It was suggested that by maintaining the restrictions on re-sale of acquired land, councils' capacity to meet its IPR strategic objectives could be restricted. Furthermore, it should be permissible to adopt a broader range of circumstances where land acquired compulsorily may be resold, for example, to facilitate economic growth, for strategic commercial purposes and job creation, but only after an open and transparent process has been undertaken and approval given by the State Government. The Taskforce received no detailed evidence to suggest that the current restrictions on the resale of land have unnecessarily hampered council functions and services.

### 3.3.13 The Taskforce recommends

council plans for the compulsory 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.

### 3.3.14 Public Land

#### Commentary

The Taskforce heard from councils that there was considerable frustration with the unnecessary red tape in the public land management regime, primarily in three areas:

- the time required to reclassify public land from community to operational, with the necessity to obtain consent for a change to the LEP to facilitate the re-classification following a mandatory public hearing
- the complexity associated with the categorisation and sub-categorisation of community land when preparing and amending plans of management, and
- the administrative obstacles faced by councils with the leasing of community land in excess of five years.

The Taskforce proposed that the classification regime be abandoned in favour of councils developing Asset Management Plans to identify the existing and proposed future uses of public land. Land acquired by the council would be specifically accounted in the Asset Management Plan and the proposed use would be clearly outlined. Should there be a proposal to change the use or sell public land, an appropriate community engagement process would be undertaken with a public hearing utilised for land having significant value or importance. Finally, the Taskforce proposed the need for concurrence from the Department of Planning in respect of the granting of a lease, licence or other estate over public land should be removed.

Most submissions commented on the public land proposals and elicited a mixed response. Many supported the proposals including removing the classification system in favour of an Asset

Management Plan regime, while some objected to the classification removal, largely due to concern that it would make it easier for councils to sell land previously classified community. Some submissions questioned how this category of land would be defined and also noted that small neighbourhood parcels of land could be seen as having significant value or importance to the local community.

The Taskforce recognises that there may be instances where parcels of open space land are now zoned residential under councils' newly adopted standard LEP template. Accordingly, if the classification system is removed it may mean that such land could be sold for other purposes without a proper public process. There will need to be a transparent public process in the event that community land is proposed for sale.

Submissions also questioned the need to hold public hearings in all cases as well as the complexity of categories and sub-categories of land uses under plans of management. This matter would be addressed as part of the council's Asset Management Plan and adopted Community Engagement Strategy with the objective being to reduce prescription by simplifying the categories and sub-categories.

Some submissions questioned the need for proposals to grant leases, licences and other estates over community land requiring approval of the Minister for Local Government, especially when a proposal exceeding five years has attracted perhaps only one objection. Given that a report on the proposal from the Department of Planning is also required to be obtained before the Minister may provide consent, and that a Taskforce objective is to remove unnecessary government intervention and red tape, it is suggested that Ministerial approval in these circumstances should not be required.

The Taskforce has also noted that the current processes for the management of council owned public land and Crown land managed by council are complex and often inconsistent. The Taskforce recommends that the processes be harmonised and made sufficiently flexible to reduce unnecessary red tape and overlap. The final shape of a structure for Crown land management by councils will have regard to the

outcomes of the current Crown Land Management Review.

The Taskforce convened several public land workshops to review and refine its proposals. The Taskforce recommendations are designed to ensure adequate protection for public land while providing additional flexibility for local government.

#### **3.3.14 The Taskforce recommends**

- (1) councils be required to strategically manage council-owned public land as assets through the IPR framework
- (2) balancing reasonable protections for public land use and disposal by retaining the classification regime of public land as either community or operational land and require a council resolution at the time of acquiring or purchasing land to specify the classification, category and proposed use or uses
- (3) a proposed change in the use or disposal of community land be addressed through the council's Asset Management Planning and Delivery Program
- (4) a public hearing be held by an independent person where it is proposed to change the existing dominant use or to dispose of community land, with the results of the public hearing to be reported to and considered by the council before a decision is made
- (5) any use of a public hearing or other consultation process under the Act be specified in the council's Community Engagement Strategy
- (6) recognising the LEP zoning processes and restrictions applying to council owned public land
- (7) simplifying and reducing the categories and sub-categories of use to which community land may be applied through the Asset Management Planning process so as to identify and accommodate other ancillary or compatible uses appropriate to the current and future needs of the community

- (8) ceasing the need for separate plans of management for community land to be prepared and maintained, and in lieu, utilise the Asset Management Planning and Delivery Program of the IPR process
- (9) ceasing the need for a separate report to be obtained from the Department of Planning and the need for ministerial approval where council proposes to grant a lease, licence or other estate over community land in excess of the current 5 years, where an objection has been received by the council
- (10) proposed leases and licences be addressed as part of the council's Asset Management Plan and adopted Community Engagement Strategy with the 30 year maximum term to remain unchanged.

### **Regulatory Functions**

#### **3.3.15 Approvals, Orders and Enforcement**

##### **Commentary**

The Taskforce received many submissions on this topic with suggestions that:

- the approvals regime is too prescriptive, unnecessarily complicated and inconsistent with consents given under the EPAA and other legislation
- there is some overlap and duplication of approval responsibilities and powers between Acts while some approvals might be better located in other legislation
- provisions relating to orders are generally working well. However, the list of areas attracting an order could be reviewed to identify where they could be better dealt with under other legislation. Enforcement powers sometimes are not sufficient to implement orders. The prescriptive nature of the approvals and orders procedure is not consistent with the Term of Reference of the Taskforce to recommend a streamlined Act that builds councils'

regulatory capability. The legislative framework for approvals could be more risk-based with greater clarity provided on how approvals and orders are to be treated.

Councils have submitted that the existing provisions regarding applications and approvals are too complex and unnecessary for many activities and could be simplified.

There are also several provisions where councils need to make decisions under more than one Act or where more than one agency is responsible for activating an approval. It is recommended that these be consistent and simplified.

The key focus of these provisions should be to ensure that the community understand what it is that they are being required to do and why. Some approvals for activities on land may be more appropriately regulated through other legislation including the planning provisions of the *Environmental Planning and Assessment Act 1997* (EPAA).

The Taskforce accepts that there are sound reasons for being prescriptive in legislation about the manner of dealing with approvals and orders in circumstances where people's rights and interests are being directly affected and where a failure to comply may result in appeals to the Land and Environment Court.

Recommendations are made to transfer or delete several approvals and orders from the Act. This list is not exhaustive and a complete review of the approvals and orders tables should identify additional matters better addressed under other legislation or repealed.

The Taskforce sees merit in the current Government proposals to transfer provisions from Chapters 6 and 7 of the Act dealing with waste water management and recycling to specialist water legislation.

Regarding the operation of local water utilities by councils, there are arguments to support the remaining regulatory provisions relating to water

supply, sewerage and drainage also being transferred to specialist legislation. This decision should appropriately await the outcome of other reviews currently underway.

Strengthening of IPR will provide councils an enhanced strategic function allowing discretion to determine community priorities and to manage council resources in order to meet statutory requirements. Discretionary capacity should also be enabled in the regulatory framework.

The Taskforce is satisfied that there is practical utility in retaining the ability of councils to make Local Approvals Policy (LAPs) while streamlining of the current processes is appropriate.

The Taskforce considers that councils should be required to adopt an Enforcement Policy stating what factors will be considered in determining whether or not to take action, including the level of risk (the NSW Ombudsman has apparently developed model guidelines). The factors should be consistent across all councils. This may replace Local Orders Policies (LOPs). The Taskforce sees particular merit in this recommendation.

Several councils have requested a new power to allow a council to charge an administration fee for service of orders in the Act and other legislation and full cost recovery for a regulatory function undertaken by the council.

The time limit for commencing summary proceedings for offences should be increased from 6 months. It is noted the EPAA prescribes 2 years while the *Protection of the Environment Operations Act 1997* (POEOA) provides either 12 months or 3 years depending on the nature of the offence. The Taskforce recommends an increase to 12 months.

The Taskforce has received support for the proposal to increase the maximum penalties that may be imposed by a court for offences. The Taskforce is of the view that penalties should be proportionate to the seriousness of the offence and act as a deterrent.

### 3.3.15 The Taskforce recommends

- (1) regulatory provisions be reviewed to ensure that the Act provides guidance on regulatory principles but contains flexibility and less prescription in regulation implementation, provision of statutory minimum standards or thresholds, and councils having discretionary “on-the-ground” functions
- (2) consideration be given to the notion of a risk based approval process where persons or corporations are given general approval to conduct certain work rather than dealing with applications on a piecemeal basis
- (3) within this framework, the prescriptive processes of approvals and orders be streamlined and, subject to risk assessment, be placed where possible into regulations
- (4) removal of as many approvals and orders as possible and placing in specialist legislation if they cannot be repealed
- (5) the principles for dealing with approvals and orders be incorporated into a council’s IPR framework through the Delivery and Operational Plans, including adoption of an Enforcement Policy and any LAPs and LOPs
- (6) penalties for offences in the Act and regulations be increased to ensure they are proportionate to the nature of the offence, and that the ability to serve a penalty notice should be made an option for additional offences
- (7) councils be required to adopt an Enforcement Policy stating what factors will be considered in determining whether or not to take action, including the level of risk. The factors should be consistent across all councils
- (8) improving councils’ ability to recover costs for conducting work on private land
- (9) aligning council powers of entry with contemporary legislative standards
- (10) increasing the time limit for commencing summary proceedings from 6 to 12 months.

The Taskforce notes that IPART is currently conducting a Red Tape Review of Local Government Compliance and Enforcement and is considering regulatory issues and how regulatory burdens may be reduced. The Taskforce has not been able to consider these reports as they have not been released.

### 3.3.16 Water Management

#### Commentary

The Taskforce supports proposed changes to water recycling provisions which will consolidate and simplify the legislative framework.

The Taskforce makes no recommendations regarding the structures for the delivery of water and sewerage in non-urban areas, noting that the issues were considered but are being addressed by other reviews.

Development of a Local Water Utilities Act is not considered warranted on the basis that responsibility for water supply and sewerage in regional NSW is likely to continue to remain with general purpose and county councils.

**3.3.16 The Taskforce** supports changes proposed to water recycling provisions which will consolidate and simplify the legislative framework. Otherwise the Taskforce makes no recommendations regarding the structures for the delivery of water and sewerage in non-urban areas, noting that the Taskforce gave the issue consideration but is aware this area is being dealt with by other reviews.



### 3.3.17 Tribunals and Commissions

#### Commentary

The Taskforce is aware that the Government has constituted a NSW Civil and Administrative Tribunal which is expected to consolidate the Local Government Pecuniary Interest and Disciplinary Tribunal into its operations.

It is noted that the Independent Panel is examining the issue of structures and boundaries, how boundary changes might be facilitated, and possible change of the method of operation of the Local Government Boundaries Commission.

Few submissions were made concerning the future role and function of the Local Government Remuneration Tribunal which sets the annual fees for mayors, councillors, county council chairpersons and members. While the Taskforce is of the view that the Tribunal is working well, consideration should be given whether to merge its operations with the Statutory and Other Officers Remuneration Tribunal.

#### 3.3.17 The Taskforce notes

- (1) it is expected the Local Government Pecuniary Interest and Disciplinary Tribunal will be consolidated into the newly constituted NSW Civil and Administrative Tribunal
- (2) the Independent Panel is examining the issue of structures and boundaries, how boundary changes might be facilitated, and possible change of method of operation of the Local Government Boundaries Commission and accordingly makes no comment pending the outcome of this review
- (2) consideration be given whether to merge the Local Government Remuneration Tribunal with the Statutory and Other Officers Remuneration Tribunal.

### 3.3.18 Other Matters

#### Commentary

In undertaking this review of the local government Acts the Taskforce has focussed on developing high level principles and policies for the new Act. However a number of other matters have come to the attention of the Taskforce that it considers should be addressed in the new Act. These include:

#### 3.3.18 The Taskforce recommends

- (1) consistent with Taskforce recommendation 1.3, that in place of sections 23A and 10B(5) that the Act empowers the Director General to issue mandatory codes on operational and governance matters relevant to local government
- (2) a formal Oath of Office for councillors is introduced as a mechanism for inducting councillors into their role and reinforcing the serious nature of the role and the chief responsibilities and duties the role entails
- (3) the provisions of the Act governing councils' expenses and facilities policy are reviewed to ensure they are streamlined and unnecessary red tape eliminated
- (4) a review be undertaken of circumstances that do not invalidate council decisions and including consideration of the appropriateness of adding the following to those circumstances that do not invalidate council decisions – "a failure to comply with the consultation and engagement principles"
- (5) conferring authority on councils to allocate, maintain and enforce property numbering
- (6) councils be provided with an effective means to regulate camping in vehicles on road and road related areas

(7) the following matters be reviewed depending on the outcomes of other reviews currently incomplete:

- a. how councils are financed, particularly rating. The Taskforce consistently received feedback detailing issues with the provisions of the Act relating to how councils are financed
- b. community engagement to ensure consistency with the planning community participation proposals under the new Planning Act if adopted
- c. Tribunals and Commissions, particularly the role and functions of the Boundaries Commission to ensure that the Act supports recommendations of the Independent Panel adopted by the State Government
- d. roles and responsibilities of council officials. It is essential that the Act clearly defines the roles and responsibilities of the mayor, councillors and the general manager. The Taskforce recommends that these definitions are reviewed to ensure that they reflect recommendations of the Independent Panel adopted by the State Government.

## CHAPTER 4 – REVIEW OF THE CITY OF SYDNEY ACT

### Commentary

The Taskforce Discussion Paper sets out the background for the various provisions of the *City of Sydney Act 1988*, identified issues for consideration, and made suggestions for change arising from stakeholder and public submissions. The Taskforce concluded under the present local government boundary arrangements applying to metropolitan Sydney, a separate City of Sydney Act should be retained based on:

- the significance of Sydney as a global city
- a separate Act as a driver for placing the city in a pre-eminent position
- the City having regional, national and international significance
- the economic importance of the Central Business District of the City and centre for the NSW Parliament.

Sydney is Australia's largest capital city and contributes 25% to the New South Wales economy and 7.5% to the national economy. The Taskforce recognises the symbolic significance of the City of Sydney as a global city and acknowledges the position expressed by the Sydney City Council, LGNSW and others that as a capital city government, the City requires appropriate and separate authority and responsibility.

The Taskforce believes there is a strong case for retaining the CoSA which includes provision for the Central Sydney Planning Committee and the Central Sydney Traffic and Transport Committee. They provide effective mechanisms for State and local government to deal with significant issues of transport and development in Sydney.

Effective transport infrastructure is integral to economic development and accessibility to the City by workers, residents and visitors. The City argued effectively that the nature of these issues and their impacts on the global City of Sydney distinguish the City's local government area from others such that stand alone legislation is appropriate and necessary.

The Sydney City Council submitted that the CoSA requires enhanced mechanisms for dealing with State and nationally significant issues. The Council has sought amendments to provide for a mayor-council model rather than the model applying elsewhere in the State (ie. council-manager) as this model applies in other major cities (e.g. Adelaide).

Sydney City Council also submitted that to encourage partnership and coordination between levels of government there be established a City of Sydney Committee to address identified strategic issues, and establish Regional Mayors Committees to develop and implement regional strategies consisting of mayors and senior State government representatives. The Taskforce has not considered these requested amendments in detail as the work of the Independent Panel includes an examination of various strategic regional governance structures.

A number of submissions were received concerning the elections for the City of Sydney, particularly in relation to the entitlement of non-resident landowners, corporate landowners and occupiers and lessees.

The Taskforce has considered the divergent views as to the most appropriate manner for the preparation and maintenance of the non-residential electoral rolls for the City of Sydney and acknowledges the complexity and cost implications of some suggestions. Achieving greater clarity and the reduction of unnecessary red tape has been a key Taskforce objective.

Under the CoSA a person is entitled to be enrolled and vote in the City of Sydney elections if on the NSW Electoral Commissioner's State electoral roll for Legislative Assembly seats in the City of Sydney area. Moreover, the following are entitled to apply, by a nominated date, to vote in the election of the City of Sydney:

- non-residential sole owners of land
- non-residential joint owners of land not being a corporation, each entitled to vote

- sole corporations as owners of land who can nominate one elector
- two or more corporations owning land who can nominate one elector for each corporation
- occupiers/lessees of land not being residents of the City of Sydney, who pay more than \$5,000 in rates/rent; each tenant is entitled to be enrolled as an elector
- sole corporations as lessees of land who are entitled to nominate one elector
- two or more corporations as lessees of land who are entitled to nominate one elector for each corporation
- those eligible under section 16A of the CoSA.

The non-residential rolls are prepared by the NSW Electoral Commissioner and lapse after the election for which they were prepared. The current legislation casts the onus of enrolling on those in the above categories. It has been submitted that the process of enrolling is bureaucratic, onerous and leads to a limited response to enrolling.

Preceding a council election, the Electoral Commissioner is required, 90 days before the closing date of the election, to send an enrolment letter addressed to each person whose name appeared on the non-residential rolls for the previous election and to each corporation which nominated an elector for the previous election.

Leading up to the 2012 elections, the Commissioner noted a decline in electors seeking to be enrolled on the city's non-residential rolls and conducted a significant mail out (79,888 letters) to possible eligible enrollees, as well as placing targeted advertising to encourage eligible non-resident electors and corporations to enrol.

Notwithstanding this endeavour, the non-residential rolls were closed off at 1,708 enrollees. There are 185,000 residents within the City of Sydney. It is estimated there are 20,000 businesses, as well as many lessees and corporations operating in the City of Sydney area. In 2011, 78.5% of the rates paid to Sydney

City Council were paid by non-resident persons or corporations.

Businesses, corporations and non-resident owners of land have a significant interest in the management of the City of Sydney as their operations and perhaps performance can be impacted by decisions of the Council.

Included in the submission by the Electoral Commissioner were three options concerning non-resident voting:

- (1) maintain the current process;
- (2) abolish the rights of corporations to appoint nominees to exercise their vote, or
- (3) consider the City of Melbourne model of non-residential enrollees.

In relation to submission (1), the Taskforce believes the current process for non-residential and corporate enrollees is complex and not conducive to encouraging those presently entitled to enrol to do so.

In relation to submission (2), the Taskforce believes as corporations play a significant role in the City of Sydney, as well as providing a significant income to the Council and can be impacted by Council decisions, it would not be fair or equitable to remove them from being entitled to appoint a nominee to vote.

In relation to submission (3), the Taskforce visited the Melbourne City Council and the Victorian Electoral Commission and has examined the election provisions of the *City of Melbourne Act 2001* (sections 9 – 11).

The City of Melbourne Act provides that non-resident owners, occupiers of rateable land and corporations can apply to be on the rolls provided they make application before a certain date.

In the event that this does not occur, then certain persons are deemed to be enrolled to vote as non-resident land owners, occupiers, or in the case of corporations being occupiers of land or landowners, certain persons are enrolled on behalf of the corporation.

The significant difference between the current City of Sydney franchise provisions and the City of Melbourne is that those non-resident landowners, occupiers and corporations in the City of Melbourne area, who do not apply to enrol voluntarily, will be deemed to have voting rights. In the case of the City of Sydney, only those who have enrolled by the closing date are entitled to vote.

The City of Melbourne accumulates information to enact the deeming provisions as follows:

- As to residents of the City of Melbourne, they are deemed to be on the roll of electors as compiled by the Victorian Electoral Commission.
- For non-resident owners, including corporations owning land, this information is ascertained by reference to property information held by the Council.
- For corporations, the company secretaries and directors are determined from information provided by the Australian Securities and Investments Commission (ASIC) and are appointed alphabetically from such information.
- In the case of occupiers of rateable land who live outside the City of Melbourne and have occupied the rateable land for one month or more, the City of Melbourne canvasses all businesses, estimated to be 18,000 in number, before a general election to determine the occupier or occupiers of the business who can vote. The Council does this six months before that election when conducting a survey of businesses in the Melbourne City Council area to obtain statistical information in addition to determining those who shall be deemed to vote.

The Taskforce believes that similar deeming principles should be adopted for the voting entitlements of non-resident land holders, occupiers and corporations holding property or operating businesses in the City of Sydney area who have not voluntarily, before the due date, enrolled to vote. It is vital that persons and entities who are very much part of the fabric of the City of Sydney be involved with the democratic process of the Council.

The threshold amount of \$5,000 provided in section 14 of the CoSA may also need review as it was set during the 1990s.

### Other Matters

Regarding the method of election of the Lord Mayor of Sydney by popular vote, there were no suggestions made for change. The Taskforce makes no recommendation for amendment to the CoSA in this respect.

The Taskforce had proposed the transfer of the special environmental planning powers that allows the rectification of landscaping on uncompleted developments, contained in Part 6 of the CoSA to the EPAA. Sydney City Council has requested amendment to Part 6 following adoption of the Sydney Local Environmental Plan 2012, so as to ensure the application of these powers to the City Centre area only. The Taskforce raises no objections to this proposal.

#### 4.1 The Taskforce recommends

- (1) a separate Act for the City of Sydney be retained (pending the report and recommendations of the Independent Panel) noting that the Sydney City Council is also subject to the provisions of the Local Government Act
- (2) the electoral provisions applying to the Sydney City Council be transferred from the CoSA to a new Elections Act, as recommended at section 3.3.1 above, thereby providing a single repository for NSW electoral law
- (3) residents of the City of Sydney who are at the relevant date enrolled, within the meaning of the *Parliamentary Electorates and Elections Act 1912*, on the roll for any electoral district and whose place of living as described on the rolls is within the City of Sydney, shall be entitled to one vote provided that if a person is so entitled to vote because they are a resident of the City of Sydney, they shall not be entitled to be enrolled as an elector in any other capacity

- (4) (i) that persons presently entitled to vote and corporations who are entitled to nominate a person to vote on its behalf to vote under the CoSA at Council elections be entitled to enroll to vote  
(ii) that persons, other than those on the roll as set out in recommendation 4.1(3) being presently entitled to vote under the CoSA at Council elections, retain that entitlement to enrol to vote. If a person so entitled to enrol to vote or a corporation who is entitled to nominate a person to enrol to vote on their behalf has not enrolled to vote by the due date or being a corporation nominated a person to enrol to vote on their behalf by the due date, then those persons so entitled to vote as individuals or on behalf of corporations shall be deemed to be enrolled to vote at the Council election  
(iii) in the case of corporations, if no nomination has been made by a corporation of a person to be entitled to vote on behalf of the corporation the Council will, from the records of ASIC, as mentioned in recommendation 4.1(5) hereof, enroll the first director in alphabetical order to vote on behalf of that corporation and if that director may be disqualified to vote for any reason, the next director in alphabetical order until a director is validly appointed to vote on behalf of the corporation
- (5) the Sydney City Council determines, from all available Council information and records as well as information provided by ASIC, the person deemed to be entitled to vote on behalf of non-resident owners and corporations
- (6) to determine the occupiers entitled to vote, the Sydney City Council canvas the businesses within the City of Sydney six months before Council elections to determine such entitlement
- (7) the non-residential rolls be prepared and maintained by the Sydney City Council with the General Manager of the Council to certify the rolls

- (8) for the Sydney City Council election, the postal voting method be compulsory for all people enrolled or deemed to be enrolled as non-residential enrollees
- (9) that non-compulsory candidate information be required to be distributed with the ballot papers sent out as part of the postal voting procedure, limited to a photo of the candidate and 250 words
- (10) that those enrolled as non-resident enrollees shall remain on the rolls for two ordinary elections unless they sooner lose their qualification or are disqualified from being an enrollee.

As indicated earlier in this report, the Taskforce has not had the benefit of considering the report of the Joint Standing Committee on Electoral Matters of the NSW Parliament which is currently inquiring into the conduct of the 2012 council elections.

## REFERENCES

Division of Local Government (2013) *“Integrated Planning and Reporting Guidelines for Local Government in NSW”*

Local Government Acts Taskforce (2012) *“Preliminary Ideas”* Paper

Local Government Acts Taskforce (2013) *“A New Local Government Act for NSW”*

NSW Government (April 2013) *“A New Planning System for NSW - White Paper”*