



Wyong Shire Council's Submission in Response  
to the Local Government Acts  
Taskforce Final Report

April 2014

Wyong Shire Council  
2 Hely Street Wyong  
PO Box 20 Wyong NSW 2259  
**P** 02 4350 5555 **F** 02 4351 2098  
**E** [wsc@wyong.nsw.gov.au](mailto:wsc@wyong.nsw.gov.au)  
**W** [www.wyong.nsw.gov.au](http://www.wyong.nsw.gov.au)  
Opening Hours 8.30am - 5.00pm



# Wyong Shire Council's Submission in Response to the Local Government Acts Taskforce Final Report

This document is Wyong Shire Council's (Council) response to the final report titled 'A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988', published by the Local Government Acts Taskforce. The final report's recommendations provide for an enabling, principles-based Local Government Act 1993 (the Act), that simplifies the regulatory aspects of the legislation. Council notes that there is considerable support for the Act and rather than a total rewrite, the final report recommendations are a refocus, re-emphasis and simplification of the legislation.

The report consists of 31 topics that include a number of recommendations or actions within each topic. Council did not provide comment on topic 4.1 of the report pertaining to the City of Sydney Act 1998. The remaining 30 topics detail 115 recommendations or actions relating to the Act. Council's response to these recommendations and actions is outlined in a table annexed as Attachment A, and can be summarised as follows:

- Council disagrees with 20 of the Report's recommendations, albeit half of those are rejected in part only;
- Council agrees with 73 of the Report's recommendations, albeit some of those are agreed to conditionally;
- Council makes suggestion for 12 of the Report's recommendations;
- Council supports 4 of the Report's recommendations;
- Council notes 5 of the Report's recommendations;
- Council provides no comment to 1 of the Report's recommendations;





# Appendix A

## Approach and Principles for the Department of the New Act

### 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

**Agree** but suggest it to include "Respecting the staff capacity within the respective Council to deliver the services detailed".

(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

**Agree** however councils must be treated professionally and empowered to self-manage.

(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.

**Agree**

## Structure 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

**Agree.** Something is required in the strategic framework pertaining to “respecting the capacity of staff within respective councils to deliver the services detailed in the plans”.

**Agree.** Fundamental principle to respect the staff capacity within a council to deliver the services detailed in the IP&R framework.

**Suggest** the ability of councils to enter into PPP without regulation should be based on a % of the council’s annual capital budget and should take into account the asset base of a council. It is suggested the threshold value be 25% of a council’s annual capital works budget. So if the average annual capital works budget of a Council is \$40M then the Council should only be regulated under PPP regulations if the project has a capital value greater than \$10m. This model establishes a clear risk threshold for councils based upon their financial capacity.

**Noted**

## Purposes of the Local Government Act

### 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)

**Agree**

(2) the nature and extent of the responsibilities and powers of local government

**Agree**

(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.

**Agree**

## Role and Guiding Principles of Local Government

### 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

**Agree** as long as it is simple, cost efficient and not bureaucratic.

**Agree** however there must also be capacity for councils to respond to issues in a timely manner.

**Agree** but with recognition of the constraints around Regional and Rural NSW.

**Agree** but it must recognise cost as a factor with regards inclusive decision making.

**Agree** but on matters of agreed scientific fact.

**Agree**

**Agree**



## Role and Guiding Principles of Local Government (cont'd)

<b>3.1.2</b>	<p><b>Guiding Principles of Local Government</b></p> <p>Guiding Principles to be observed by local government are to:</p> <p>(1) provide elected community-based representative and participatory local democracy, and open and accountable government</p> <p>(2) foster and balance the needs, interests, social and economic wellbeing of individuals, diverse groups and community</p> <p>(3) adhere to the social justice principles of equity, rights, access and participation</p> <p>(4) encourage stewardship and facilitate sustainable, responsible management of resources, infrastructure and development</p> <p>(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</p> <p>(6) ensure sustainable management and that all decisions incorporate considerations of risk management and long-term sustainability</p> <p>(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</p> <p>(8) achieve and maintain accepted best practice public governance and administration, and act fairly, responsibly, ethically, transparently and in the public interest</p> <p>(9) optimise technology, and foster innovation and continuous improvement.</p>	<p><b>Suggest</b> delete "provide" and insert "develop".</p> <p><b>Supported</b></p> <p><b>Suggest</b> delete" adhere" and insert "aspire".</p> <p><b>Supported</b></p> <p><b>Suggest</b> insert "using best endeavours in" after "consider future generations by" and by deleting "restoring".</p> <p><b>Suggest</b> insert "material" after "all".</p> <p><b>Supported</b></p> <p><b>Suggest</b> remove "best practice" and insert "value for money".</p> <p><b>Supported</b></p>
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## Constitution of Councils

### 3.1.3

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

**Disagree** This is a problem as the term ‘body politic’ is not clearly defined in its application to Local Government. Therefore, there is uncertainty on its legal meaning. Suggest a cleaner definition of body politic be developed and incorporated into the Act.

## Roles and Responsibilities of Council Officials

### 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.

**Agree**

## Integrated Planning and Reporting (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

**Agree** as long as there is capacity and flexibility for a council to respond and act on any issue the council deems appropriate.

(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

**Agree** as long as there are different standards for Metro, Regional and Rural councils that respect the different challenges these areas face.

(3) removing duplication from other parts of the Act, where the principle or practice is already captured in the IPR legislation or guidelines

**Agree** but this principle should also apply to other pieces of legislation that councils administer.

(4) ensuring the legislation facilitates a strategic leadership role for councils in their local communities

**Agree**

(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

**Agree**

(6) simplifying the provisions of IPR to increase flexibility for councils to deliver IPR in a locally appropriate manner.

**Agree**, however it must ensure efficient time and cost considerations are embedded in any provisions.

## Community Engagement

### 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

**Agree** with minor amendments.

- a) Insert "value for money" after "ongoing".
- b) Insert "reasonable" after "provided with".
- c) **Agree**

## Community Engagement

### 3.2.2

- |    |  |    |  |
|----|--|----|--|
| d. | ensure that the views presented to the council will be given due consideration   | d) | <b>Agree</b>   |
| 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 | e) | <b>Agree</b>   |
| f. | arrange flexible special engagement procedures in particular instances   | f) | <b>Suggest</b> adding "efficient" after "arrange".             |
| g. | consider all groups, even though it may be difficult to reach every diverse community group, and some groups will choose not to engage.  | g) | <b>Suggest</b> adding "reasonable access to" after "consider". |



## Performance for Local Government

### 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

**Disagree.** These should be a different set of standard measures for different groupings of councils. The groupings of councils should be Metropolitan, Regional and Rural with further definition within each of these three groups based upon populations above 150,000 and below 150,000.

Based upon this model 6 sets of standard measures should be established to compare the respective groupings of councils.

(2) an analysis of the performance measures results so that councils can identify the actions required to elevate performance

**Suggest** the analysis must be done in a way that considers the circumstances of each council.

(3) a self-assessment of the performance of the governing body on an annual basis

**Agree** as long as it is done as part of the Annual Report.

(4) in lieu of an end of term report, councils provide a mid-term report as to progress with the Community Strategic Plan.

**Suggest** this is not clear. For clarity in each 4 year electoral term it is suggested that a year 1 annual report, a year 2 annual report, a year 3 annual report and the end of term report (including the year 4 report) is produced.

## Technology

### 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

**Agree,** however Wyong Shire Council believes core technology standards should be established across all councils to allow integration of State-wide data and to maximise staff skills as they change councils.

(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.

**Disagree** see above.

## 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 cost

**Agree**

(2) the Act be drafted so as to enable the adoption of new technologies such as technology assisted voting when feasible to do so

**Agree**

(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

**Disagree**, there should be the option of not holding a by-election at any time during the term whereby the Minister should have the ability to fill the position from the next candidate from the respective political party on the ballot paper or not fill the vacancy at all when the democratic structure of the council would not change.

(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

**Disagree**. It should be modelled on the system that operates for the Senate and Upper House in the NSW Parliament.

(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

**Disagree**. Suggest discretion is given to the Minister subject to consultation with the Council not to fill any vacancy.

(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

**Agree** but do not make this mandatory as it may be unnecessary and costly.

(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

**Agree** but ensure it is Council's decision who they use to administer their elections.

(8) the term of mayors elected by the councillors to be extended from 1 year to 2 years.

**Agree**, but also suggest it could be 1, 2, 3 or 4 years as decided by the Council.

## Meetings

### 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

**Agree** but keep it simple.

(2) modernised and unnecessary prescription and red tape removed

**Agree**

(3) designed to facilitate councils utilising current and emerging technologies in the conduct of meetings and facilitating public access

**Agree** but respect the cost obligations.

(4) flexible to enable remote attendance through technology at council meetings in emergencies such as natural disasters

**Agree.** But it should be available at any time particularly for larger geographical councils and as family / work commitments of Councillors dictate.

## Appointment and Management of Staff

### 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 councils 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

**Agree** while ensuring there is capacity / flexibility for Council to respond to any issues that arise.

**Agree**

**Agree**

**Agree**

(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

**Agree**

(3) each council to determine arrangements for regulatory responsibilities other than under the Act

**Agree**

(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

**Agree** but suggest it be at the discretion of the council rather than via regulation / Industrial Award to allow the Council to be responsive and flexible with options within their local government area. This will ensure it can be implemented more quickly / efficiently.

(5) that the maximum term allowable for temporary staff appointments be extended from 1 year to 2 years

**Agree** but suggest it be allowed for up to 4 years. This allows the engagement of staff where funding is provided by the NSW and Commonwealth Governments (it would then align to political terms).

## Regional Strategic Organisations of Councils and Formation and Involvement in Corporations and Other Entities

### 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

**Agree** as long as it is a decision for the councils to establish and dismantle and that the process to implement is simple and efficient.

(2) the provisions of the Act relating to the formation of corporations and other entities should continue.

**Disagree.** This should be a decision of council as it is for any other organisation in the private sector. There should be an obligation on the council to inform and report to the Minister and the community on the corporation's activities and financial position.

## Protection from Liability

### 3.3.5

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

**Suggest** introducing a capped amount in regards to councillors' / staff liability on any matter. It should also be widened to cover full indemnity and protection for staff and councillors from historical matters. Deemed 'good faith' also requires tightening up.



## Code of Conduct

### 3.3.6

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

**Agree** however the Code of Conduct is quasi-judicial and presently allows the right to appeal to the courts. This increases costs for council and is not productive. Suggest the right of appeal is limited to Council and the Pecuniary Interest Tribunal only. Code of conduct investigations should also be standardised / simplified via code assessment documentation / reports to decrease the time and cost burden to councils.

## Pecuniary

### 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

**Agree**

(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

**Agree**

## Delegations

### 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.

**Agree.** Everything should be able to be delegated to the General Manager except for the adoption of the budget, the IPR plans, the sale of land and the borrowing of money.

**Agree.** See above.

## Financial Governance

### 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

**Agree**

(2) there be a realignment of the regulatory focus under the legislative framework towards systems and risk management rather than process prescription

**Agree**

(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:

**Agree**

- a. safeguarding integrity in financial reporting
- b. making timely and balanced disclosures
- c. recognising and managing risk

- a. **Suggest** add "particularly matters of a material nature"
- b. **Suggest** add "of a material nature" after "disclosures"
- c. **Suggest** add "material" after "managing".

(4) minimum expectations be prescribed by legislation or sub-regulatory instrument. A potential framework is:

**Agree** but the framework must be focused on matters of a material nature, be efficient in its operation and not create unnecessary duplication.

- 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

**Agree**

(6) a further review of rating and finance matters be undertaken as required after the Independent Panel recommendations are determined by the State Government.

**Agree**

## 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

**Agree** however suggest there is an immediate increase to \$250k (GST excluded) to the threshold before there is a need to go to competitive public tenders. Extra consideration should also be given to flexible procurement arrangements to engage local suppliers for Regional and Rural councils due to the economic challenges facing these areas.

Materiality and the cost of administering the procurement systems must be important criteria with regards to whatever is proposed.

**Agree**

**Agree** however there must be flexibility for a council to respond to any issues it deems important as they arise.

**Agree** however there should be flexibility given to Regional and Rural councils to engage local suppliers for economic development reasons.

**Agree** however remove the obligation of stating it is accessible to "all" and instead insert "reasonably accessible".

**Suggest** "efficient" is added to "fair, open and transparent"

**Agree** but suggest it be kept simple.

## Procurement

(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 the State Government policies which afford exemption from tendering obligations such as when purchasing from registered Australian Disability Enterprises.

**Disagree.** Suggest you give all councils full autonomy from the start and the ones that fail to perform should then be restricted.

- a. See above.
- b. See above – if this is the direction taken then ensure it is simple and cost efficient to administer.

**Agree** however suggest it also include the capacity for councils to use all other councils or statutory authorities or any other public sector procurement panels that have gone through a competitive tendering process. In addition Rural and Regional councils should be able to have more flexibility to engage local businesses directly where it is deemed to be in the local interests.



## Capital Expenditure Framework

### 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.

**Suggest** these guidelines are only triggered when 1 single capital project has an expenditure that makes up more than 25% of the total annual capital works budget for the respective council. This then ensures materiality around the risk that a council may have and establishes a clear \$ threshold.

## Public Private Partnerships (PPP)

### 3.3.12

The Taskforce recommends

(1) that PPP projects continue to be subject to regulation due to the significance of the risks involved

**Disagree.** A professional, well run council should be able to make commercial decisions to have strategic alliances with other providers.

If this is to be pursued then there should be a minimum threshold test for when the regulation operates. It is suggested that where a single project budget makes up more than 25% of the total annual capital works budget for the Council then the regulation is triggered.

(2) aspects that could be streamlined or simplified be identified and mechanisms for ensuring PPPs be considered for inclusion in the IPR framework.

**Agree** but also see above.

## Aquisition of Land

### 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.

**Disagree.** IPR process is not well placed for this due to timing issues and complex market impacts. The IPR process is a public process whereas acquisitions of land requires commercial in confidence negotiations. Council should not be fettered with this burden on competitive neutrality grounds.

Councils should be able to deal with land under the same system as State Government Departments.

## Public Land

### 3.3.14

The Taskforce recommends

(1) councils be required to strategically manage council-owned public land as assets through the IPR framework

**Disagree.** Councils should be able to deal with land the same as State Government Departments.

(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

**Disagree.** The Classification of land is an unnecessary cost to the ratepayer and should be removed.

(3) a proposed change in the use or disposal of community land be addressed through the council's Asset Management Planning and Delivery Program

**Disagree.** Councils should be able to deal in land in the same manner as State Government Departments.

(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

**Disagree.** Not competitive and unnecessary. Should only require public notification of council's intentions and decisions.

(5) any use of a public hearing or other consultation process under the Act be specified in the council's Community Engagement Strategy

**Suggest** unnecessary. Suggest it is left to each council to determine.

## Public Land (cont'd)

3.3.14	(6) recognising the LEP zoning processes and restrictions applying to council owned public land	<b>Agree.</b>
	(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	<b>Disagree.</b> Community land classification should be removed.
	(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	<b>Suggest</b> unnecessary if community land classification is removed.
	(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	<b>Agree.</b> Council should be able to determine dealings / rights / interests in land for periods of up to 40 years (this timeline is suggested as it is the normal life of a building and recognises the demands from the financial sector).
	(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.	<b>Disagree.</b> Land should be addressed via a specified property register. Suggest the maximum term be increased to be 40 years to align with the normal life of a building and standards set by the financial sector.

## Approvals, Orders and Enforcement

### 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

**Agree**

(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

**Agree**

(3) within this framework, the prescriptive processes of approvals and orders be streamlined and, subject to risk assessment, be placed where possible into regulations

**Agree**

(4) removal of as many approvals and orders as possible and placing in specialist legislation if they cannot be repealed

**Agree**

(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

**Disagree** Council does not understand how approvals can be included in IPR framework– there are complex timeframe and applicant / operator issues. Including adoption of an Enforcement Policy and any LAPs and LOPs' should be removed. Too much detail, this should be left to each council as these are operational issues.

(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

**Agree**

## Approvals, Orders and Enforcement

(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

**Disagree.** Matter for individual councils to determine as circumstances require. Rural and Regional councils require a different approach to Metropolitan councils.

(8) improving councils' ability to recover costs for conducting work on private land

**Agree**

(9) aligning council powers of entry with contemporary legislative standards

**Agree**

(10) increasing the time limit for commencing summary proceedings from 6 to 12 months.

**Agree**

## Water Management

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.	No comment
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## Tribunals and Commissions

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	Agree
	(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	Noted
	(3) consideration be given whether to merge the Local Government Remuneration Tribunal with the Statutory and Other Officers Remuneration Tribunal.	Agree

## Other Matters

### 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

**Disagree.** S23A is sufficient in that councils must give proper consideration to the issues raised and how it impacts on their council. mandatory codes will not work across all of NSW. If this is going to proceed the only way mandatory codes may work is if they were broken up by Metropolitan, Regional and Rural councils.

(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

**Agree**

(3) the provisions of the Act governing councils' expenses and facilities policy are reviewed to ensure they are streamlined and unnecessary red tape eliminated

**Agree** Should be given clear guidance about what can be claimed and what is the maximum amount allowed. Suggest a maximum expenses allowance be established. Our preference is for an expense allowance set at 80% of the annual councillor fee, (excluding training and conferences approved by Council resolutions) for each councillor and remove the necessity to make claims. The Mayor would require a higher allowance. Suggest it be double that of a councillor.

(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"

**Disagree.** Too complex. Unnecessary, these motherhood statements will be challenged in court thus costing councils \$. It should be left to the Council to decide if their decision is valid / invalid.

(5) conferring authority on councils to allocate, maintain and enforce property numbering

**Noted**

## Other Matters

3.3.19	(6) councils be provided with an effective means to regulate camping in vehicles on road and road related areas	<b>Noted</b>
	<p>(7) the following matters be reviewed depending on the outcomes of other reviews currently incomplete:</p> <p>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</p> <p>b. community engagement to ensure consistency with the planning community participation proposals under the new Planning Act if adopted</p> <p>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</p> <p>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.</p>	<p><b>Noted</b></p> <p>a) Noted.</p> <p>b) Noted but ensure the outcome is respectful of time and cost considerations.</p> <p>c) Noted.</p> <p>d) Agree but they should still be defined at only a strategic level so that it promotes team work.</p>



April 2014  
Wyong Shire Council  
2 Hely Street Wyong  
PO Box 20 Wyong NSW 2259  
**P** 02 4350 5555 **F** 02 4351 2098  
**E** [wsc@wyong.nsw.gov.au](mailto:wsc@wyong.nsw.gov.au)  
**W** [www.wyong.nsw.gov.au](http://www.wyong.nsw.gov.au)  
Opening Hours 8.30am - 5.00pm