

ADDITIONAL ITEM

26 June 2013

To the Ordinary Council Meeting

2.4 Mayoral Minute - Wyong Shire Council Submission to Local Government Act Review Taskforce

TRIM REFERENCE: F2004/06385 - D03423863

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The *Local Government Act 1993* and the *City of Sydney Act 1988* are to be rewritten.

The Minister for Local Government, the Hon Don Page MP, has appointed a four member Local Government Acts Taskforce to develop new, modern legislation that meets the current and future needs of the community, local government and the local government sector.

In undertaking its work the Taskforce is required to consult with key stakeholders and to take into account those recommendations of the Independent Local Government Review Panel that are adopted by the Government.

The aim of the review is the development of a modern Act for local government in New South Wales that is streamlined, written in plain language, reduces unnecessary red tape and easy to use.

The Taskforce has released a discussion paper ["A New Local Government Act for NSW"](#) This discussion paper is designed to provoke thought and discussion on how the legislation and regulatory regime can be best designed to provide an optimum framework for long term sustainable local government in NSW.

The approach to the development of the new Act is flexible and principle based, with language in plain English and set out in a logical form. It proposes to move any detailed provisions to the regulations and guidelines and being clear which guidelines are mandatory.

Integrated planning and reporting will be the central theme for the Act. Other provisions should point back to IPR not duplicate.

The Act is proposed to be changed in the following key areas:

- Elections
- Meetings
- Appointment and Management of Staff
- Formation and Involvement in Corporations and Other Entities
- Procurement
- Public Private Partnerships
- Acquisition of Land
- Code of Conduct
- Pecuniary Interest
- Delegations
- Financial Management
- Capital Expenditure Framework
- Approvals, Orders and Enforcement
- Water Management

2.4 Mayoral Minute - Wyong Shire Council Submission to Local Government Act Review Taskforce (contd)

- Public Land
- Performance of Local Government
- Tribunals and Commissions

The Taskforce acknowledges that the review of the Act also has impact on the review on Future Direction of Local Government being undertaken by the Local Government Independent Review Panel and it will consider any relevant matters concurrently.

Submission required to be made to Local Government Act Review by June 28 2013. Council has considered the options provided and met to discuss the submission to be made by Wyong Shire Council.

A copy of the proposed submission is attached.

I formally move:

That Council endorse the attached submission to the Local Government Act Taskforce.

ATTACHMENTS

- 1 WSC Submission to Local Government Act Taskforce D03435039

Wyong Shire Council supports proposals or initiatives which create jobs, attract investment and provide better value services to the Wyong Shire community.

To support this principle the state government should provide a cost benefit analysis with an implementation strategy (including costs) for any large scale changes. This will allow the community to debate the proposals.

Wyong Shire Council's submission relating to the specific key proposals or options is provided in the attached table.

No	Item	Key Proposal or Option	Comment
1.3	Approach and Principles for the Development of the New Act	<p>The Taskforce proposes:</p> <p>(i) a flexible, principles based legislative framework, avoiding excessive prescription, written in plain language and in a logical form. The new Act should be confined to setting out the principles of how councils are established and operate. When further detail or explanation is required as to how these principles are to be achieved then regulations, codes and guidelines will be used where appropriate.</p> <p>(ii) a more consistent approach be taken to the use and naming of the regulatory and other instruments, noting that there is inconsistent use of mandatory and discretionary codes, section 23A guidelines, practice notes, discretionary guidelines and the like.</p>	<p>WSC supports this item.</p> <p>WSC supports this item.</p>
3.1.1	Purposes of the Local Government Act	<p>(i) The Taskforce proposes the following draft Purposes of the Act</p> <p>"The purpose of this Act is to provide</p> <p>(1) a legal framework for the NSW system of local government in accordance with section 51 of the Constitution Act 1902 (NSW)</p> <p>(2) the nature and extent of the responsibilities and powers of local government</p> <p>(3) a system of local government that is accountable, effective, efficient and sustainable</p>	<p>WSC supports this item</p>

No	Item	Key Proposal or Option	Comment
3.1.2	Role and Principles of Local Government	<p>(i) The Taskforce proposes the inclusion of a new Role of Local Government and a set of Principles for Local Government that will replace the charter in the new Act as follows:</p> <p>“Role of Local Government</p> <p>The role of local government is to lead local communities to achieve social, economic and environmental wellbeing through:</p> <ul style="list-style-type: none"> i) utilising integrated strategic planning ii) working in partnership with the community, other councils, State and Commonwealth governments to achieve outcomes based on community priority as established through Integrated Planning and Reporting iii) providing and procuring effective, efficient and economic infrastructure, services and regulation iv) exercising democratic local leadership and inclusive decision-making <p>Principles of Local Government</p> <p>Principles to be observed by local government are to:</p> <ul style="list-style-type: none"> i) provide community-based representative democracy with open, unbiased and accountable government ii) engage with and respond to the needs and interests of individuals and diverse community groups iii) facilitate sustainable, responsible management, development, protection and conservation of the natural and built environment; iv) diligently address risk and long-term 	WSC supports this item

No	Item	Key Proposal or Option	Comment
		sustainability; v) achieve and maintain best practice public governance and administration, and to act fairly, responsibly, ethically, and in the public interest; and vi) optimise technology, and foster innovation and flexibility.	
3.2.1	Integrated Planning and Reporting	The Taskforce proposes that: (i) IPR be elevated to form a central 'plank' of the new Act as the primary strategic tool to enable councils to fulfil their leadership role and deliver infrastructure, services and regulation based on community priorities identified by working in partnership with the community, other councils and the State Government. (ii) other provisions of the Act be drafted so as to better support IPR including accountability to the community, financial sustainability and partnership with the State and others to deliver community outcomes. (iii) where possible relevant provisions from other sections of the Act be incorporated into IPR to reduce duplication. For example, capital planning and expenditure approval provisions could be moved to the IPR resourcing strategy provisions; and community consultation processes should reflect IPR community engagement principles and need not be repeated throughout the Act. (iv) the IPR provisions be simplified to increase flexibility for council to deliver IPR in a way that is locally appropriate.	WSC supports this item

No	Item	Key Proposal or Option	Comment
3.2.2	Community Consultation and Engagement	<p>The Taskforce proposes the following set of principles to guide councils regarding how consultation and engagement might occur:</p> <ul style="list-style-type: none"> • commitment to ensuring fairness in the distribution of resources (equity); rights are recognised and promoted (rights); people have fairer access to the economic resources and services essential to meet their basic needs and to improve their quality of life (access); and people have better opportunities to get involved (participation) • ensuring that persons who may be affected by, or have an interest in, a decision or matter should be provided with access to relevant information concerning the purpose of the consultation and the scope of the decision(s) to be taken • ensuring that interested persons have adequate time and reasonable opportunity to present their views to the council in an appropriate manner and format • ensuring that the views presented to the council will be given due consideration • ensuring that council, in exercising its discretion as to how consultation will proceed in any particular circumstance, has regard to the reasonable expectations of the community, the 	<p>WSC supports this item. WSC currently has in place an Engagement Framework that has principles that support this component of proposed changes to the Act.</p> <p>WSC further submits that all internet and email advertising of all statutory notices as an alternative to newspapers.</p> <p>The aim of Council's submission is to achieve two primary goals:</p> <ol style="list-style-type: none"> 1. To reduce the costs associated with print media advertising (newspapers), thereby better managing the limited resources available; and 2. To ensure a more effective form of disseminating information to the community, taking into account the high usage of electronic mediums. Whilst it is acknowledged that not all segments of the community engage in electronic media, the same can be said of those participating in newspaper readership.

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		<p>nature and significance of the decision or matter, and the costs and benefits of the consultation process</p> <ul style="list-style-type: none"> • arranging for special consultative procedures in particular instances. 	
3.2.3	Technology	<p>The Taskforce proposes that:</p> <p>(i) as a general principle the Act should support the optimal and innovative use of technology by councils to promote efficiency and enhance accessibility for the benefit of constituents.</p> <p>(ii) the Act allow each council to determine the most appropriate use of technology taking into account the principles for local government and community engagement through the IPR framework discussed above.</p>	WSC supports this item
3.3.1	Elections	<p>The Taskforce proposes:</p> <p>(i) use of postal voting at all council elections as a means of increasing efficiency and voter participation and reducing council election costs.</p> <p>(ii) the following possible improvements to electoral provisions:</p> <ul style="list-style-type: none"> • the most appropriate voting system – exhaustive preferential; optional preferential; proportional, or first past the post • the option of utilising electronic voting in the future 	<p>In relation to the Election legislation, WSC supports the principle of savings and efficiencies and proposes that:</p> <ul style="list-style-type: none"> - If a vacancy occurs the Council, in consultation with the Minister, decides whether a) a bi-election is called, b) the vacancy remains for the term of Council, or c) the next candidate in line (ie next on the ticket for Group voting or next past the post for independent non grouped.) A bi –election is estimated to cost this Council \$200,000. - Remove the mandatory requirements for advertisements in newspapers which will provide Council with flexibility to give notice via other more efficient and cost effective means.

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		<ul style="list-style-type: none"> • mechanisms for removing the need for by-elections, when a vacancy occurs either in the first year following an ordinary election or up to 18 months prior to an ordinary election • half term elections for councillors, similar to Senate elections • the ward system being abolished • improving the adequacy of and access to candidate information prior to elections • the enrolment process and maintenance of the non-residential roll, particularly in the City of Sydney 	<p>WSC Supports the Taskforce proposals in relation to</p> <ul style="list-style-type: none"> - use of postal voting at all council elections as a means of increasing efficiency and voter participation and reducing council election costs - improving the adequacy of and access to candidate information prior to elections - improving the enrolment process and maintenance of the non-residential roll. Providing opportunities for business owners to participate in the election - improving the adequacy of and access to candidate information prior to elections <p>WSC has no submission to make in respect of:</p> <ul style="list-style-type: none"> - the voting system. (eg preferential , 1st past the post.) - the option of utilising electronic voting in the future - half term elections for councillors, similar to Senate elections <p>WSC DOES NOT support</p> <ul style="list-style-type: none"> - the ward system being abolished <p>WSC has recently made a submission to the Inquiry into the 2012 Local Government Elections. A copy of the full submission is attached and is provided for inclusion in WSC's submission to this Taskforce. A list of the points put forward is provided</p>

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			<p>below:</p> <p>WSC proposes amendments the provisions in the Act in relation to:</p> <ul style="list-style-type: none"> - WHS considerations for volunteers - Disabled access for electors - E-voting - Postal and Pre-Poll Voting - Communication at State Level - Local Government remuneration - Standardise the Contract Arrangement between the NSWEC, other providers and Councils including performance provisions
3.3.2	Meetings	<p>The Taskforce proposes:</p> <p>(i) the provisions relating to council meetings be:</p> <ul style="list-style-type: none"> • reviewed, modernised and any unnecessary prescription and red tape removed, • designed to facilitate councils utilising current and emerging technologies in the conduct of meetings and facilitating public access; and • consolidated into a generic mandatory Code of Meeting Practice that may if necessary be supplemented to meet local requirements, provided the amendments are not inconsistent with the provisions of the Act and standard Code of Meeting Practice. 	<p>WSC supports this proposal. There are many opportunities for savings in this category. See 3.2.3 above re technology. Council meetings could be notified by more efficient means including via web page and or social media etc.</p> <p>Requirements for hard copy business papers be deleted of alternate electronic access available.</p> <p>WSC supports the proposal for a Model Code of Meeting Practice with facility for individual supplementation.</p>

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3.3.3	Appointment and Management of Staff	<p>The Taskforce proposes:</p> <p>(i) the strategic responsibilities of the council be clearly separated from the operational responsibilities of the general manager in determining the council's structure and be aligned with IPR by:</p> <ul style="list-style-type: none"> • the general manager being responsible for determining the organisation structure and for recruiting appropriately qualified staff necessary to fulfil each role within the structure • the council being responsible for determining those services and priorities required and to provide the resources necessary to achieve the Council's Delivery Program, and • the general manager being responsible for the employment of all staff and there be no requirement for the general manager to consult with the council in relation to appointment and dismissal of senior staff. <p>(ii) all positions meeting the criteria as a senior staff position be treated as such, appointed under the prescribed standard contract for senior staff, identified as a senior staff position within the organisation structure, and the remuneration be reported in the council's annual report.</p> <p>(iii) in line with the principle of reducing prescription:</p> <ul style="list-style-type: none"> • each council to determine how it deals with 	<p>WSC is generally supportive of the proposals relating the appointment and management of staff with the additions of the following specific items:</p> <ul style="list-style-type: none"> - The GM should consult with the Council regarding matters relating to the appointment and dismissal of Senior Designated Officers (SDO's). - The Council determines in consultation with the GM, the functions it undertakes as part of the IPR process and initiates a restructure and the GM implements a structure that reflects those functions. - SDO's (including GM) may be appointed as a contractor (corporate structure) thereby enabling councils to attract high calibre candidates whilst maximising savings in employment costs.

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		<p>regulatory responsibilities that fall outside of the Local Government Act, rather than prescribe the appointment of a Public Officer, and</p> <ul style="list-style-type: none"> • the EEO provisions be incorporated with the IPR processes and procedures <p>(iv) the current prescription in the Act relating to the advertising of staff positions and staff appointments be transferred to regulation or to the relevant industrial award.</p>	
3.3.4	Formation and Involvement in Corporations and Other Entities	The Taskforce proposes to defer further consideration of this component of the legislation until the work of the Independent Panel is completed.	Noted. WSC has made a separate submission on this item to the Independent Panel.
3.3.6	Code of Conduct	The Taskforce is not proposing any changes to the conduct provisions of the Act.	Noted.
3.3.7	Pecuniary Interest	<p>The Taskforce proposes that:</p> <p>(i) the pecuniary interest provisions be reviewed to ensure they are rewritten in plain language, easily understood and any unnecessary red tape removed.</p> <p>(ii) consideration be given to utilising available technology to assist with the submission and maintenance of pecuniary interest disclosures and</p>	WSC supports this item, especially the management of the process by electronic means.

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		to facilitate appropriate access to this information.	
3.3.8	Delegations	The Taskforce proposes that the provisions in the Act relating to delegations be reviewed to ensure they are streamlined; written in plain language; and are reflective of the roles and responsibilities of the council and the general manager to facilitate the efficient, effective and accountable operation of local government.	WSC supports this proposal
3.3.9	Financial Governance	The Taskforce proposes: (i) there be greater scope for a focus on principles and the definition of financial systems/minimum standards within a new legislative framework and for assimilation with the mechanisms of IPR in line with frameworks proposed for other parts of the legislation. (ii) there be a rebalancing of the regulatory focus of the legislative framework towards systems and risk management rather than process prescription. (iii) to await the Independent Panel work on many of the issues associated with fiscal responsibility including; rating issues; asset and financial planning; rates and charges; management of expenditure; and audit practices before recommending legislative positions on these matters.	WSC supports this proposal. See WSC submission to LGIRP in relation to Rating Systems
3.3.10	Procurement	The Taskforces proposes: (i) the adoption of a more principles-based enabling approach to procurement combined	WSC supports this proposal. There should be varying thresholds for tendering / contract approval depending on Council size and financial capacity and risk exposure. One size

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		<p>with a medium level of regulation designed to ensure support of the principles of value for money, efficiency and effectiveness, probity and equity, and effective competition.</p> <p>(ii) in relation to the current tendering threshold of \$150,000 rather than the legislation setting a dollar value threshold a more flexible principles-based approach be taken to councils setting the threshold based on risk assessment of the proposed procurement.</p> <p>(iii) the delegations section of the Act be reviewed to facilitate councils entering into collaborative procurement arrangements such as via ROCs and allowing councils to delegate procurement to general managers with a 'report back' mechanism.</p> <p>(iv) any regulation of council procurement support councils utilising available technologies that can assist with efficient, effective and economic procurement processes that are accessible to all relevant stakeholders and are fair, open and transparent.</p>	<p>doesn't fit all.</p> <p>There also needs to be the capacity for regional/rural councils to dispense with competitive tendering if it is deemed to benefit the local economy.</p>
3.3.11	Capital	The Taskforces proposes:	WSC supports the taskforce option being that a capital

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	Expenditure Framework	(i) that a capital expenditure and monitoring framework be developed to enable the appropriate management of risk by councils. This framework should be tailored to risk levels, including significance of the project (including materiality and whole of life costs) and not based on arbitrary monetary thresholds or procurement vehicles.	expenditure and monitoring framework be developed to enable the appropriate management of risk by Councils but it should reflect the varying size of a council. For example; for WSC it should only affect capital projects greater than \$20 million.
3.3.12	Public Private Partnerships	The Taskforce proposes that PPP projects continue to be subject to regulation and aspects that could be streamlined or simplified be identified and mechanisms for ensuring PPPs be considered for inclusion in the IPR framework.	WSC considers that current legislation has a "one size fits all approach" whereby smaller projects are limited due to excessive regulation. A more flexible approach would regulate for risk and free up smaller less significant projects to proceed without bureaucracy. Suggest it should only arise for WSC for projects greater than 20 million.
3.3.13	Acquisition of Land	The Taskforce proposes: (i) no change at this time to the acquisition of land provisions as they remain essential to council's continued service and infrastructure delivery, are generally working well and there are no strong reasons to support change. (ii) council plans for the acquisition of land be linked with the IPR processes, and in particular the expressed opinion of the community in the Community strategic plan on the need for additional public land or the sale of public land, be included in Delivery Program provisions.	WSC supports this proposal.
	Public Land	The Taskforce proposes: (i) the current processes for council land management, being complex and inconsistent	WSC supports this item. The IPR alignment approach will enable councils to respond to community needs and manage public land in accordingly.

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		<p>with the Crown Lands regime, be simplified and complementary.</p> <p>(ii) the Local Government Act:</p> <ul style="list-style-type: none"> • require councils to strategically manage council-owned public land as assets through the IPR framework • balance reasonable protections for public land use and disposal where the land is identified as having significant value or importance • end the classification regime of public land as either community or operational land and instead, require the council resolution at the time of acquiring or purchasing land to specify the proposed use or uses • provide that a proposed change in the use or disposal of public land, including consultation mechanisms, should be dealt with through the council's asset management planning and delivery program • retain the requirement for a public hearing to be held by an independent person where it is proposed to change the use or dispose of public land identified as having significant value or importance. The results should be reported to and considered by the council before a decision is made and proposals should be addressed through council's community engagement strategy • recognise the LEP zoning processes and restrictions applying to council owned public land • review the prescribed uses to which public land may be applied to accommodate other uses 	<p>WSC agrees that the classification of land process should be abolished.</p>

No	Item	Key Proposal or Option	Comment
		<p>appropriate to the current and future needs of the community</p> <ul style="list-style-type: none"> • cease the need for separate plans of management for public land to be prepared and maintained, and in lieu, utilise the asset management planning and delivery program • cease the need for a separate report to be obtained from the Department of Planning and Infrastructure where proposed leases and licences of public land are referred to the Minister for Local Government for consideration. 	
	Structural Reform	Seek to reduce the number of councils in the Sydney basin to around 15, and create major new cities of Sydney, Parramatta and Liverpool, each with populations of 600-800,000.	WSC has no submission in relation to this item
3.3.15	Approvals, Orders and Enforcement	<p>The Taskforce proposes:</p> <p>(i) regulatory provisions be reviewed to ensure that the Act provides guidance on regulatory principles but contains flexibility and less prescription in their implementation, with statutory minimum standards or thresholds the council must meet, and councils discretionary 'on-the-ground' functions.</p> <p>(ii) within this framework, the prescriptive processes of approvals and orders be streamlined and, subject to risk assessment, be placed into regulations where possible, allowing the Act to focus on high priority areas and principles.</p>	WSC Supports this item.

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		<p>(iii) certain approvals be repealed or transferred to other legislation, such as the installation of manufactured homes and the operation of caravan parks and camping grounds. Installation of domestic oil and solid fuel heating appliances should be transferred to the Environmental Planning and Assessment Act; approvals for filming activities on public land be deleted or transferred to other legislation; approvals for amusement devices be transferred to health and safety legislation; and approvals for engaging in activities on public roads be transferred to roads and transport legislation.</p> <p>(iv) given that maximum penalties have not increased since 1993, penalties for offences in the Act and Regulation be reviewed to ensure they are proportionate to the seriousness and nature of the offence, and act as a deterrent to re-offending.</p> <p>(v) to have regard to the findings and recommendations of the reports by IPART as they affect local government that are due mid-2013.</p> <p>The Taskforce invites comments as to whether there are currently activities requiring approval that are low-risk or redundant and therefore can be removed from the legislation.</p>	
3.3.16	Water	The Taskforce will await the report and	See WSC submission to LGIRP

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	Management	recommendations of the Independent Panel on water management so that the regulation of water by local government in NSW can be further considered. This will involve the determination of appropriate governance structures for water and sewerage delivery in those areas currently serviced by LWUs and water county councils. It will also resolve whether the constitutional and regulatory arrangements for new structures should remain in the Act or relocated into a more appropriate integrated legislative framework.	
3.3.18	Performance of Local Government	The Taskforce will await the report and recommendations of the Independent Panel before considering any legislative provisions but invites submissions on whether the performance of local government and its constituent entities should be further monitored and reported.	See WSC submission to LGIRP
4.1	City of Sydney Act	The Taskforce proposes that a separate Act for the City of Sydney be retained (pending the report and recommendations of the Independent Panel) noting that the Council is also subject to the provisions of the Local Government Act.	WSC has no submission in relation to this item
	GENERAL COMMENTS AND FURTHER SUGGESTIONS	Any further submissions in relation to the Review of the Local Government Act	In general, Councils with populations over 150,000 and/or proven performance should be granted greater financial and policy making powers given the capacity of the Council. Full time Councillors

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			<p>Councillors, especially those of larger organisations should be appointed to the role in a full time capacity and be remunerated accordingly, including appropriate support staff and vehicle.</p> <p>Limited Liability The Act also needs strengthening around limiting liability of Council (eg. limiting financial exposure to Court decisions on injuries sustained by persons in the surf.)</p> <p>Facilities and Expenses Remove requirement for Facilities and Expenses policies with prescriptive limits. Council to determine appropriate expense requirements and budget allocation in accordance with IPR framework.</p> <p>Ministerial Guidelines (eg Stormwater Management Charge) The Ministerial Guidelines need to be clear on the impact that they cause. Wyong Shire Council supports the removal of the constraints regarding the Stormwater management so that Council may impose a charge across the entire shire.</p>