

Tweed Shire Council

Response to:



**LOCAL GOVERNMENT ACTS
TASKFORCE**

A NEW LOCAL GOVERNMENT ACT FOR NSW

DISCUSSION PAPER



4 April 2013

Introduction

The release of the Local Government Acts Taskforce - *A NEW LOCAL GOVERNMENT ACT FOR NSW - DISCUSSION PAPER* - April 2013 provides a series of draft local government act proposals for consultation.

"This review is being conducted in the context of a number of other significant reviews, and especially that of the Independent Local Government Review Panel (the Independent Panel). Under their Terms of Reference, the Taskforce has to have regard to the work of the Independent Panel and any of its recommendations that are adopted by the Government. The Independent Panel is scheduled to report in July 2013. Consequently, there are a number of matters that the Taskforce is unable to address until the decision of Government is available in relation to the Independent Panel recommendations. These are noted throughout this Discussion Paper.

The purpose of this Discussion Paper is to outline the deliberations of the Taskforce on options and proposals for the principles of the new legislation. The Taskforce is proposing to develop a flexible, principles-based legislative framework where possible that avoids excessive prescription, is written in plain language, and in a logical form.

This Discussion Paper explores matters that in the view of the Taskforce are the key elements of a new Local Government Act (the Act) and puts forward proposals for comment on how these elements might be accommodated."

Submission

The following response documents Tweed Shire Council's position, in relation to the draft proposals. The Taskforce has developed a series of questions, (which has been used as the basis of this submission), to invite comment on the proposals and options contained in this paper.

1. *Does Council support the proposed approach to the construction of the new Act and why? If not why not?*

Topic	Proposal No.	Tweed Shire Comment
Approach and Principles for the Development of the New Act	1.3	<p>The Act should be stand alone and be supported by Regulation, Codes, Guidelines and Codes of Practice that provide a more consistent framework than is currently the case.</p> <p>Council supports the view that the new Act should focus on outcomes rather than process and be reduced in volume, however caution should be exercised that this does not lead to greater complexity by needing to reference several separate documents that do not necessarily carry the weight of legislation.</p> <p>It is noted that the introduction of more codes/guidelines can be dealt with directly by the Division of Local Government, negating the need to go to parliament for formal legislative amendment and thereby avoiding current accountability measures.</p>

2. *What proposals are supported and why?*

Topic	Proposal No.	Tweed Shire Comment
Purposes of the Local Government Act	3.1.1	Council supports the proposed DRAFT purposes of the New Local Government Act of providing a legal framework, the nature and extent of responsibilities and powers, including accountability, effectiveness, efficiency and sustainability elements.
Roles and Responsibilities	3.1.4	Council supports the need to clearly define the separation of responsibility of the councillors/council governing body for setting the strategic direction and policy of the council and the responsibility of the general manager as accountable to the governing body for

Topic	Proposal No.	Tweed Shire Comment
		implementation of strategy and policy and the operational activities of the council.
Integrated Planning and Reporting	3.2.1	Council supports the proposal to make the IPR framework a central plank within the new Act. As IPR legislation was introduced into the Act as a straight replacement for the Management Plan in 2009, it would be beneficial to have IPR requirements integrated throughout the Act.
Elections	3.3.1	<p>The utilisation of postal voting is supported by Council as is the consolidation of election process into one combined Act with State government.</p> <p>It is suggested that in order to provide an even opportunity for all Council candidates (regardless of financial resources) that each candidate provides a one page CV - description of their background and what their platform/policy positions are, and this be published on a specific section of the Council website or Electoral Commission website.</p> <p>Fines for non-voting should be provided to council as a revenue item or at least as an offset against the election expense.</p> <p>It should also be noted that the timeline for consideration of the End of Term Report prepared by the outgoing council, needs review to avoid the report being included as an item of Electoral Material and not being able to be advertised.</p>
Formation and Involvement in Corporations and Other Entities	3.3.4	Council notes that the taskforce has deferred this component of the Act until the finalisation of the Independent Review Panel report.
Code of Conduct	3.3.6	Council supports and has adopted (March 2013) the current version of the Model Code of Conduct and Administration of the Code of Conduct Procedure.
Pecuniary Interest	3.3.7	<p>Council supports a review and rewrite of the pecuniary interest provisions to provide more clarity.</p> <p>There are however concerns with privacy provisions and identity theft that relate to the proposed action of making the pecuniary interest returns available electronically.</p>

Topic	Proposal No.	Tweed Shire Comment
Financial Governance	3.3.9	<p>Council supports the proposal for there to 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 and that there be a rebalancing of the regulatory focus of the legislative framework towards systems and risk management rather than process prescription.</p> <p>Council notes that the Taskforce has deferred many elements of this component of the Act until the finalisation of the Independent Review Panel report.</p>
Capital Expenditure Framework	3.3.11	<p>Council is open minded in regard to this proposal as it lacks any real detail. It is noted that while the Taskforce is generally trying to reduce regulation, this proposal may increase regulation. It is suggested that any proposed monitoring role could be monitored by Council's Audit Committee.</p>
Public Private Partnerships	3.3.12	<p>Council notes the proposal of the Taskforce.</p>
Acquisition of Land	3.3.13	<p>Council supports the proposal and has implemented a comprehensive Policy on Acquisition of Land and is in accord with land purchases being identified through the Delivery Program.</p> <p>Council would question how opportunities for acquisition or sale of land would be undertaken in between operational plan timetables.</p>
Public Land	3.3.14	<p>Council supports the propositions as outlined by the Taskforce, in particular:</p> <ul style="list-style-type: none"> • 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

Topic	Proposal No.	Tweed Shire Comment
		Council would question how the existing public land is to be reclassified? Council supports the proposals on the plans of management.
Water Management	3.3.16	Council notes that the Taskforce has deferred this component of the Act until the finalisation of the Independent Review Panel report.
Performance of Local Government	3.3.18	Council notes that the Taskforce has deferred this component of the Act until the finalisation of the Independent Review Panel report.

3. What proposals could be improved, modified and strengthened and how?

Topic	Proposal No.	Tweed Shire Comment
Role and Principles of Local Government	3.1.2	<p>Council supports the retention of a set of principles that are to guide a council in carrying out its functions. The replacement of the Charter with roles and principles for local government is supported with the following highlighted amendments/questions.</p> <p>“Role of Local Government</p> <p><i>The role of local government is to lead local communities to achieve social, economic and environmental well being through:</i></p> <ul style="list-style-type: none"> i) <i>utilising integrated strategic planning</i> ii) <i>working in partnership with the community, other councils, State and Commonwealth governments to achieve outcomes based on community priority as established through Integrated Planning and Reporting</i> iii) <i>providing and procuring effective, efficient and financially viable infrastructure, services and regulation</i> iv) <i>exercising democratic local leadership and inclusive decision-making OR and engaging with the community. (what is the interpretation of inclusive decision-making)?</i> <p>Principles of Local Government</p> <p><i>Principles to be observed by local government are to:</i></p>

		<ul style="list-style-type: none"> i) <i>provide community-based representative democracy with open, unbiased and accountable government</i> ii) <i>engage with and respond to the needs and interests of resident and non resident ratepayers and diverse community groups and consider future generations.</i> iii) <i>facilitate sustainable, responsible management, development, protection and conservation of the natural and built environment;</i> iv) <i>diligently address risk and long-term sustainability;</i> v) <i>to achieve and maintain best practice public governance (can this be defined)? and administration, and to act fairly, responsibly, ethically, and in the public interest; and</i> vi) <i>optimise technology, and foster innovation and flexibility."</i> <p>Consideration should also be given to including ecological economics in future planning to recognise and account for the economic value of ecosystems and provide appropriate mechanisms to cost environmental impacts and to fund the maintenance and restoration of these lands.</p>
<p>Community Consultation and Engagement</p>	<p>3.2.2</p>	<p>The following proposed principle is more representative of the "<i>Principles of Local Government</i>" rather than the community consultation:-</p> <p><i>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)</i></p> <p>Council does not support the statement <i>rights are recognised and promoted</i>. This could lead to an increase in complaints and resources required by Council.</p> <p>How is it planned to ensure that rights are recognised and promoted for all sections of the community?</p> <p>The proposal to implement guiding principles as opposed to regulation for community consultation is supported.</p>

<p>Technology</p>	<p>3.2.3</p>	<p>The objective that technology solutions be appropriate to local requirements and community needs; and the removal of prescription inhibiting technology is supported.</p> <p>It is suggested that to promote efficiency and avoid duplication of effort, the procurement provisions of the Act should allow easy adoption of technology products and solutions based upon purchasing decisions of other councils and government bodies without further tendering or product selection.</p> <p>Further, given Council's role in local emergency management, wherever possible the Act should minimise the restrictions on Council establishing communications infrastructure and services; ie: granting of carrier rights to Councils for the provision of this infrastructure.</p> <p>Finally, to promote, the efficient delivery of IT services the inter-relationship of the Act with the Data Privacy Act should be amended to facilitate the use of cloud-based services from Australian and New Zealand (ie trusted) data centres. In particular the requirements to validate the hosting locations currently contained within the Data Privacy Act against the NSW Act should be adjusted so that all states of Australia and New Zealand are considered equal.</p> <p>To promote flexible delivery of IT services and projects, the Act needs to facilitate the specific industrial relations needs of IT, including specialist remuneration, cross skilling, flexible work hours (especially out of hours support), continuing education and work from home arrangements.</p>
<p>Meetings</p>	<p>3.3.2</p>	<p>Council supports the proposals of the Taskforce in relation to a generic mandatory Code of Meeting Practice.</p> <p>Any proposal for Council meetings to be broadcast live would require an amendment to the Local Government Act, Code of Meeting Practice and would also require similar privilege conditions to those afforded to debate and comments in both state and federal parliament.</p>



		There is also a need to have flexibility for some Council's given the proposed areas of coverage, to enable attendance at meetings by electronic means - SKYPE - Video Link.
Delegations	3.3.8	Concern is expressed at granting delegated authority to any other person. This aspect can create major control issues for the council as delegated authority tends to be self regulating and having any other person undertaking functions can raise control issues.
Procurement	3.3.10	<p>Council supports a review of tendering requirements including a reduction in regulation and the threshold amount for tenders of \$150,000 which is considered too low in a majority of cases. The threshold needs to be increased to an amount in the order of \$500,000 and be reported to Council as the GST Exclusive value (which is the true cost to Council).</p> <p>Alternatively thresholds could vary depending on the size and budget of a Council or DLG Group Classification (for example Groups 1-3 the threshold could be \$1 million. Groups 4-6 the threshold could be \$500,000 and others \$200,000.) AND/OR thresholds based on risk assessment coupled with an accreditation scheme or DLG/peer review mechanism to go above these limits.</p>
Approvals, Orders and Enforcement	3.3.15	<p>Council suggests that should the provisions that relate to the installation of manufactured homes and operation of caravan parks for example be transferred to other legislation, then the fees that Council are able to charge need to be reviewed.</p> <p>At present the fees set down are statutory under the current legislation and haven't been adjusted since 1993, therefore they are no longer representative of the cost to Council in processing the applications and approvals.</p> <p>Council supports the approval of amusement devices legislation (currently contained within the Regulations under the LGA) being transferred to the Health and Safety legislation where it can be administered solely by NSW Work Cover. The current process whereby WorkCover register or doesn't register various types of amusement devices, carry out certain inspections and leave others to council to carry out creates confusion, particularly when there is an accident and WorkCover are charged with the investigation. It is more logical for</p>

		<p>WorkCover to handle all the legislation relating to amusement devices.</p> <p>Council also suggests that any review of the legislation relating to offences and penalties should include the incorporation of more PINS for breaches relating to caravan parks and installations therein so that Council can utilise these and avoid the unnecessary expense of having to take legal action for the vast majority of breaches that occur.</p> <p>Council has previously identified that certain sections of the current Local Government Act 1993 could be transferred to other Acts:</p> <ul style="list-style-type: none"> • Chapter 6 part 2A Environmental Upgrade - EP&A ACT • Chapter 7 Functions - EP&A Act • Chapter 10 Elections - State Electoral Act • Chapter 16 Offences Law Enforcement - Powers and Responsibilities Act <p>These transfers would be reliant on Council being a delegated authority within these acts that allows Council to instigate appropriate action.</p>
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4. *What proposals do not have support and why?*

Topic	Proposal No.	Tweed Shire Comment
Appointment and Management of Staff	3.3.3	<p>Council supports the retention of the current sections of the Local Government Act that require council to consider and affirm the organisation structure and the appointment of the Public Officer.</p> <p>The appointment of senior staff should also be conducted in conjunction with the elected council and not at the sole discretion of the General Manager. To this end Council supports the proposals put forward in the report by the Independent Local Government Review Panel.</p> <p>The classification of senior staff, council presumes is in line with State Executive Service guidelines which would include a number of managers that are currently within the award system.</p>



		<p>In relation to the Equal Employment Opportunity Plan, Council agrees that this should be a component of the Workforce Management Strategy. Likewise Council would support the provisions relating to the advertising of staff positions being moved to an industrial award.</p>
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5. Are there any alternative proposals for the new Local Government Act that the Taskforce should consider? What are they and what is the reason supporting these proposal(s)?

Topic	Proposal No.	Tweed Shire Comment
Advertising requirements		<p>S160 of the Local Government Act has an anomaly of advertising policies for 28 days and receiving submissions for 42 days. This should be amended to be consistent with both being limited to 28 days.</p>
Investments		<p>The advertising requirements in general (Tendering, Code of Conduct Panels etc) need to be overhauled. Rather than the current requirement to advertise in a Sydney metropolitan paper, it would be beneficial to be either a 'major metropolitan paper' or even more generic such as 'largest distribution newspaper within 100km radius of the council area. Rural councils that don't get serviced by any metropolitan paper at all would also benefit from this, particularly in this day and age of technology developments as not all councils and communities are focussed on media emanating from Metropolitan areas.</p>
Meetings		<p>Clause 212 (2) of the Local Government (General) Regulations requires Council to provide an investment report that must be made up to the last day of the month immediately preceding the meeting. This can be problematic if Councils external investment reporting service and Council business paper deadlines conflict. Consideration could be given to reporting within a two month period.</p>
Tendering		<p>Consideration should be given to amending the time that a Councillor can speak to an item and the right of reply to three (3) minutes, which will enable a more streamlined approach to council meetings.</p> <p>There appears to be an anomaly between the tendering provision of sales of property (not including land or plant or equipment) under</p>



		<p>\$150,000 and the delegation of the sale by Council. This is problematic when trying to dispose of surplus goods, materials and other assets.</p> <p><u>Section 55(1) of the Local Government Act 1993</u> states:- <i>A Council must invite tenders before entering into any of the following contracts:-</i> <i>(g) a contract for the disposal of property of the council,</i></p> <p><u>Section 55(3) of the Local Government Act 1993</u> states:- <i>This section does not apply to the following contracts:-</i> <i>(f) a contract for purchase or sale by a council at public auction,</i> <i>(n) a contract involving an estimated expenditure or receipt of an amount of less than \$100,000 or such other amount as may be prescribed by the regulations</i></p> <p><u>Clause 163 (2) of the Local Government (General) Regulations 2005</u> states:- <i>For the purposes of section 55 (3) (n) of the Act, section 55 does not apply to a contract involving an estimated expenditure or receipt of an amount of less than \$150,000.</i></p> <p>AND</p> <p><u>Section 377(1) of the Local Government Act 1993</u> states:- <i>A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council, other than the following:-</i> <i>(h) the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment)</i></p> <p>A consistent state wide approach needs to be formulated for Workers Compensation Insurance. At present it is unclear how this service is exempt from tendering regulations despite the fact most Council's do not go to tender.</p>
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6. *Any comments relevant to the review of the Local Government Act and the City of Sydney Act?*

Topic	Proposal No.	Tweed Shire Comment
		Council has no further comment on the review.