Report by Cathy Jones, Corporate Strategy Coordinator

RECOMMENDATION

2. That Council lodge a submission to the Taskforce by the close-off date 28 June 2013.

PURPOSE OF REPORT

The Local Government Acts Taskforce has released an options and a discussion paper on the review of the Local Government Act, though many sections of the Act have been deferred pending final recommendations of the Independent Local Government Review Panel. Like the Independent Local Government Review Panel, the Acts Taskforce is expected to provide a final report to the Minister of Local Government by September 2013. The submission on the Taskforce discussion paper is required by 28 June 2013. This report provides commentary on proposals set out in the Options paper as the basis for the Council submission.

REPORT

Background

The Local Government Acts Taskforce was appointed by the NSW Government in 2012 to review and rewrite the Local Government Act. An objective of the review is that the work of the Taskforce will result in 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 is easy to use. The Taskforce is one of a number of concurrent reviews of local government that includes the Independent Local Government Review Panel and IPART reviews into regulation and ‘red-tape’.

In October 2012, the Taskforce released a Preliminary Ideas paper to gather information and suggestions on areas of review of the Act. Council made a submission to the Taskforce in response. In April 2013, the Taskforce released a discussion paper ‘A New Local Government Act for NSW’. The Discussion Paper contains various options and proposals for the principles of the new legislation. Submissions on this paper are required by 28 June 2013.

A number of areas of the Local Government Act are not addressed in the Options paper until the Independent Local Government Review Panel has completed its work. These areas include:

- How councils are established – Chapter 9
- Arrangements for council staff affected by the constitution, amalgamation or alteration of council areas - Chapter 11, Part 6
- County Councils – Chapter 12, Part 5.
- Financial Management - Chapter 13, Part 3
- How are Councils Financed - Chapter 15
Therefore, the review of the Act is lacking significant detail due to these omissions and in some areas Taskforce recommendations are in direct conflict with the Independent Panel’s Options paper.

The Terms of Reference for the Local Government Acts Taskforce considers the provisions of the *Local Government Act 1993* and the *City of Sydney Act 1988*, and their practical operation so as to:

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

In carrying out its work the Taskforce will:

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

Throughout the workshops and the written submissions there was general consensus about the principles for the framework for a new Local Government Act. These include:

- Autonomy, self determination – local councils should have a power of general competence
- Interconnectedness – with the local community, the region, and the State
- Good governance – separation of powers of councillors and council staff, clarity of roles and responsibilities – council staff, councillors, mayor and the State
- Leadership - stewardship
- Social justice, equity
- Transparent, accountable, efficient, effective, ethical, responsible decision making - promote integrity
- Sustainability
- Fiscal responsibility
- Consultation – acting in the public interest; facilitate and encourage local participation
- Strategic long term focus

According to the Taskforce Report, it was evident from consultations:

- There is clear support for local government in NSW to be autonomous and with a broad range of functions and responsibilities, subject to any legal constraints.
- The importance of the principle of local democracy and keeping the “local” in local government was also evident.
- The principle of autonomy was balanced by the principle that local government should exercise its powers within a strong governance framework, promoting accountability to the community and the State, and exercising long term social and fiscal responsibility.
- Linked with accountability was the importance of relationships between councils and their local community, more broadly on a regional basis, and with the State Government.
- This was underpinned by the principle that local government, in the provision of services to the community and as custodian and trustee of public assets, should exercise its functions in meaningful consultation and engagement with its community to ensure it is acting in the public interest.
- The view that local government should provide long-term sustainable strategic community leadership was also convincingly evident both from the workshops and in written submissions.

The Taskforce Report states that the following areas of the Act are considered to be working well with some qualifications:

- Charter – needs to be modernised and reflect integrated planning and reporting.
- Section 24 – devolution of general power of competency.
- Community Strategic Plan/Integrated Planning and Reporting (but with refinement).
- Role of councillors/mayor and general manager – but needs clarification.
- Many sections work well, but focused on processes rather than outcomes.
- Section 10 – provision relating to closing of meetings.
- Meeting procedures, but needs to be consolidated.
- Elections and democratic principles generally, however, election processes could be improved – see response to question 4 below.
Section 733 – exemption from liability – needs to be extended to cover coastal councils to limit potential exposure arising from climate change.
Delegations of authority, but needs refinement to reflect roles and responsibilities and facilitate the efficient and effective operation of councils.
The Act structure generally works well, but needs refinement to reflect integrated planning and reporting.
Disclosure of interests with some clarification and refinement.
Dictionary.

In relation to suggestions about moving items from the Act into regulations, codes or guidelines, the following suggestions were regularly made:

- Elections
- Approvals
- Plans of management
- Pecuniary interest
- Section 68 approvals – manufactured homes; on site waste water; wood heaters
- Section 64 - water
- Public Land provisions
- Tendering
- Chapter 7 approvals could be transferred to Environmental Planning and Assessment Act
- Notices and orders transferred to Environmental Planning and Assessment Act and penalties rationalised under one Act
- Equal Employment Opportunity could be removed if section 122B of the Anti-Discrimination Act 1977 is amended to include Local Government Authorities

In relation to views on what areas of the Act either didn't work well or required additional clarification, refinement or reduction of duplications with other instruments, the following suggestions were made:

- Public land
- Acquisition of land
- Tendering
- Approvals
- Orders
- Councillor remuneration – Local Government Remuneration Tribunal
- Expenses and facilities
- Elections
- Council Staffing
- Public Private Partnerships and formation of corporations
- Conduct
- Revenue
- Fees
- Loans
- Audit and risk management
- Enforcement
- Alcohol free zones and alcohol prohibited zones
- Water management
From the first round of consultations, the most commonly suggested principles for design of the Act were as follows:

- Less prescriptive
- Streamlined, simpler
- Logical
- Reduce unnecessary red tape
- The “why” not the “how”
- Flexible to accommodate the differences between councils
- Plain language
- Consistent and integrated with other legislation, regulations and codes
- Recognise technology
- Should be outcome focused, not process driven
- Clear delineation between Act, regulations, guidelines and codes.

Taskforce Key Proposals

The Taskforce Options Paper explores matters that in the view of the Taskforce are the key elements of a new Local Government Act and puts forward proposals for comment on how these elements might be accommodated. The Discussion Paper notes that the Taskforce has the view that “…Integrated Planning and Reporting (IPR) should form the central theme for the new Act and be the primary strategic tool that supports councils delivering services and facilities to their communities.” (p.3)

The Taskforce proposes that in addition to elevating Integrated Planning & Reporting to form the central plank of the new Act, the other provisions of the Act should be drafted to better utilise IPR. They believe that “…the elevation of IPR should allow the Act to be streamlined and made more consistent. This can be achieved by consolidation of duplicated requirements and ensuring other provisions of the Act reflect the roles and responsibilities of the council, councillors, mayor, general manager and staff as framed by IPR.” (p.3)

The Taskforce acknowledges the importance of defining the role of local government and principles to be observed by local government in fulfilling this role. Accordingly, it has proposed a redrafting of the current Charter (Section 8 of the Act) to be replaced with new Roles and Principles for local government. This will reflect local government as part of a broader governance system working strategically, and in partnership, to deliver improved outcomes for communities.

The Taskforce has the view it is essential the new Act recognises the importance of technology as a mechanism councils can use to connect with their communities and more efficiently and effectively deliver services. The Taskforce proposes that as a general principle the Act should support the optimal and innovative use of technology by councils, while ensuring this does not result in reduction of access to council.

Also, as the principal element of the governance framework for local government within NSW, the Taskforce acknowledges the importance of ensuring the Act provides a strong framework which facilitates councils acting fairly, responsibly, ethically and in the public interest.
The Taskforce has asked that submissions to the Options paper address the following questions:-

“1. Do you support the proposed approach to the construction of the new Act and why? If not why not?
2. What proposals do you support and why?
3. What proposals do you think could be improved, modified and strengthened and how?
4. What proposals do not have your support and why?
5. Do you have any alternative proposals for the new Local Government Act that you think the Taskforce should consider? What are they and what are the reasons supporting your proposal(s)?
6. Do you have any other comments relevant to the review of the Local Government Act and the City of Sydney Act?”

A series of proposals are put forward by the Taskforce under 23 headings. The table below summarises these key proposals the Taskforce is advocating and Council’s response to the proposals.

1. **Approach and Principles for Development of The New Act**

The Taskforce proposes:

(i) a flexible, principles based legislative framework, avoiding excessive prescription, written in plain language and in a logical form. The new Act should be confined to setting out the principles of how councils are established and operate. When further detail or explanation is required as to how these principles are to be achieved then regulations, codes and guidelines will be used where appropriate.

(ii) a more consistent approach be taken to the use and naming of the regulatory and other instruments, noting that there is inconsistent use of mandatory and discretionary codes, section 23A guidelines, practice notes, discretionay guidelines and the like.

Comments

Supported. Council supports the proposed framework for the construction of a new Act and supports a more consistent and harmonious approach to establishing frameworks where Acts are logically supported by well-crafted regulation, codes and guidelines minimising overlaps, duplications and often contradictions which currently occur.

2. **Purposes of the Local Government Act**

The Taskforce proposes the following draft Purposes of the Act.

“The purpose of this Act is to provide:

1) a legal framework for the NSW system of local government in accordance with section 51 of the Constitution Act 1902 (NSW)
2) the nature and extent of the responsibilities and powers of local government
3) a system of local government that is accountable, effective, efficient and sustainable.”
3. Role and Principles of Local Government

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:

**Role of Local Government**

The role of local government is to lead local communities to achieve social, economic and environmental wellbeing through:

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

**Principles of Local Government**

Principles to be observed by local government are to:

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 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."

Comments

The proposed changes are supported. 

The Taskforce acknowledges the importance of defining the role of local government and principles to be observed by local government in fulfilling this role. Accordingly, it has proposed a redrafting of the current Charter of Local Government (Section 8 of the Act) to be replaced with new Roles and Principles for local government. This will reflect local government as part of a broader governance system working strategically, and in partnership, to deliver improved outcomes for communities.
The role of local government is a new addition to the Act. It clearly references the importance of the IPR process to the leadership of local government.

4. **Integrated Planning and Reporting**

The Taskforce proposes that:

1. 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.

2. 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.

3. 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.

4. the IPR provisions be simplified to increase flexibility for council to deliver IPR in a way that is locally appropriate.

**Comments**

Integrated Planning and Reporting provisions were established by amendments in 2009 to the *Local Government Act*. This system established requirements for council’s to develop long term community plans, supported by 4 year delivery programs and 1 year operational plans including annual budgets. Resourcing strategies such as asset management, long term financial plans and workforce management plans support the goals and objectives of the strategic plans. These plans are subject to regular reporting through annual and financial reports.

The IPR process has only been implemented for relatively short time, though the benefits of the process in integrating strategies, plans and resources is significant and should continue in the new Act.

Council supports changes to the Act to encourage regional collaborations and partnerships.

Council supports integrating capital planning and expenditure approval provisions into the IPR resourcing strategy provisions. Community consultation processes should be consistent in the Act, which is not currently the case, and reflect IPR community engagement principles.

The Taskforce has noted that IPR is not fully integrated into the Act or with other functions of council. It is clearly indicated by other areas of reform, most notably planning reforms that IPR plans will need to strategically align with other legislation.

Council supports this proposal and suggests the requirement to produce an End of Term Report be reviewed as these reports are a duplication of the reporting requirements of IPR. Similarly, the requirements of the Annual Report should be simplified to avoid duplication with IPR reporting requirements or other reporting requirements eg GIPA Act annual report.
5. Community Consultation and Engagement

The Taskforce proposes the following set of principles to guide councils regarding how consultation and engagement might occur:

- 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 nature and significance of the decision or matter, and the costs and benefits of the consultation process
- arranging for special consultative procedures in particular instances.

Comments

Council strongly supports and is committed to consultation and engagement to regard proposals and plans which have impact on the community.

Council supports improving the consistency of community consultation and engagement and notes that the current legislation is overly prescriptive and inconsistent in parts. Consultation and engagement should be synchronised with IPR framework.

6. Technology

The Taskforce proposes that:

i. as a general principle the Act should support the optimal and innovative use of technology by councils to promote efficiency and enhance accessibility for the benefit of constituents.
ii. the Act allow each council to determine the most appropriate use of technology taking into account the principles for local government and community engagement through the IPR framework discussed above.

Comments

Supported in principle but with qualifications.

Since the adoption of the 1993 Act, technology has made significant impact on how Council operates particularly communication and public notifications. Traditional methods of notification such newspaper advertisement are now only one of a number of forms of communication. Despite changes in forms of communication, the Act and Regulations prescribe mandatory notifications via newspapers or gazettal, transmissions of rates notices by mail etc.
Requirements to notify by newspaper add time delays to notifications to meet publication dates as well as significant advertising costs.

Though technology is increasingly available, there are many in local communities who either do not use internet or have limited skills and rely on newspapers or mail to be notified of change. Council does not support moving notifications entirely to digital forms of communication and discarding newspaper advertisements but having sufficiently flexibility to use a variety of methods in line with community engagement strategies.

Technology may also provide opportunities for meetings to be held online such as council meetings. However, except in emergency circumstances, Council supports maintaining the requirement for Councillors to attend meetings in person to ensure that participation in meetings is effective, that the public has access to open meetings of Council and confidentiality of closed meetings is not compromised.

Council supports changes to the Act to allow councils to choose to utilise technology to consult with the community in order to reduce advertising costs and to potentially target a wider audience.

7. **Elections**

The Taskforce proposes:

(i) use of postal voting at all council elections as a means of increasing efficiency and voter participation and reducing council election costs.

(ii) the following possible improvements to electoral provisions:

   - the most appropriate voting system – exhaustive preferential; optional preferential; proportional, or first past the post
   - the option of utilising electronic voting in the future
   - mechanisms for removing the need for by-elections, when a vacancy occurs either in the first year following an ordinary election or up to 18 months prior to an ordinary election
   - 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

Comments

Council supports consolidating processes and procedures relating to state and local government elections into an election Act and where possible, ensuring consistency of processes.

Increased use of optional postal voting is supported on the grounds of unavailability of absentee voting in local government elections. Access to postal voting may assist in increasing voter turnout. This is a more cost effective and uses less resources than pre-polling.

The voting system in local government is dependent on the type of election eg number of positions etc. Council agrees that there should be uniformity of voting systems.
Electronic voting is not currently permitted at local government elections under the Act. An electronic voting system ‘iVote’ was implemented in NSW State elections in 2011 for persons with a disability, persons living remotely etc. Council is not opposed to electronic voting systems but systems need to be consistent with the conduct of State or Federal elections with assurances that systems have adequate safeguards against voter fraud.

Half term elections for councillors may have some benefit as it may provide a wider mix of experience. However, support is cautious as this would affect terms of office and is likely to increase the frequency of elections eg every two years for a full 4 year term. More information is required on this matter.

Strathfield Council does not have separate wards (abolished in early 1950s) and therefore is not resistant to abolishing the ward system. However, Strathfield is not a large council in terms of geography and all councillors are reasonably accessible to the community and are cognizant of issues across the entire local government area. In councils with large land areas, ward systems may have more relevance due to the wider geographical areas. It is noted that the Independent Panel supports forms of ward structures, particularly in relation to large council amalgmations.

Candidate information should provide detailed information on candidates so voters can make informed choices. If postal voting is used more frequently with possibility of electronic voting being used, information about candidates needs to be available to voters who may physically attending voting centres and are unlikely to meet or receive voting information from candidates.

Non-residential rolls are unique to local government as it is the only tier of government that an eligibility requirement to vote or stand as a candidate for election is property ownership. Voter electoral rolls are maintained concurrently by State and Federal Electoral Commissions, however the property qualification requires that non-residential rolls need to be separately compiled each election by the Council in which the property is owned. It has been suggested that non-residential rolls are maintained in perpetuity and enrolment information is only deleted upon request. While a non-residential roll could be maintained from election to election, the eligibility of non-residential electors to vote needs to be verified against property ownership records, which means that the existing roll is vetted against the property records and deletions made or a new roll is compiled. Given the potential for error and the fact that rolls are not publicly available due to privacy legislation, the system of compiling a new roll at each election is likely to be the only viable option.

8. Meetings

The Taskforce proposes:

(i) the provisions relating to council meetings be:

- 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.
Comments

The Taskforce Options paper does not propose altering current provisions in the Act for meetings. This is supported as meeting processes are considered to work effectively.

The Code of Meeting Practice references the Act but is largely derived from Local Government Regulations, which could form a generic Code of Meeting Practice with the option of Councils adding content consistent with the generic template.

9. Appointment and Management of Staff

The Taskforce proposes:

(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:

- the general manager being responsible for determining the organisation structure and for recruiting appropriately qualified staff necessary to fulfill 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.

(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.

(iii) in line with the principle of reducing prescription:

- each council to determine how it deals with regulatory responsibilities that fall outside of the Local Government Act, rather than prescribe the appointment of a Public Officer, and
- the EEO provisions be incorporated with the IPR processes and procedures.

(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.

Comment

The Taskforce has recommended that the General Manager should be responsible for determining the organisational structure, which is consistent with their role in recruiting and managing staff. It should be noted, however, that the organisational structure and staffing resources are required to meet the services and priorities set out by the Delivery Program, which is endorsed by the Council. As Council determines the Delivery Program and resources, it then becomes an administrative decision to staff the organisation appropriately, which should be managed by the General Manager.
Section 351 of the Act currently permits temporary appointments for a 12 month period. It is recommended that this be amended for temporary appointments to 24 months. Currently, only parental leave vacancies can be temporarily appointed for 24 months and all other temporary vacancies 12 months.

Any positions meeting the criteria as a senior staff position should be 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 Annual Report.

Each council should have capacity to determine how it deals with regulatory responsibilities that fall outside of the Local Government Act. It is not necessary to prescribe the appointment of a Public Officer.

EEO provisions should be incorporated into Workforce Management Plan in IPR process. There is no necessity to maintain a separate plan as EEO strategies should be fully integrated into workforce planning.

Requirement for advertising of staff positions and appointments could be transferred to regulations.

10. 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.

Comment

The current Act constrains formation of corporations and other entities and shared arrangements such as ROCs. This matter has been referred to the Independent Panel. Therefore, there is insufficient information to make comment at this stage.

11. Code of Conduct

The Taskforce is not proposing any changes to the conduct provisions of the Act.

Comments

Supported. The Code of Conduct was adopted on 1 March 2013 and does not require another review at present.

12. Pecuniary Interest

The Taskforce proposes that:

i. the pecuniary interest provisions be reviewed to ensure they are rewritten in plain language, easily understood and any unnecessary red tape removed.

ii. consideration be given to utilising available technology to assist with the submission and maintenance of pecuniary interest disclosures and to facilitate appropriate access to this information.
Comments

Supported. Council supports rewriting the pecuniary interest provisions in plain language, however, it is noted that there are also requirements by staff to disclose conflicts of interest in the Model Code of Conduct, which can duplicate the requirements for disclosure.

It is noted that local government councillors and designated employees are required to complete pecuniary interest returns, which are deemed to be open access information under legislation. This requirement does not appear to apply to the State Government system, where pecuniary interests of members of parliament do not seem to be openly available to the public and there seems to be no equivalent requirement for State employees.

There are issues with designated staff being required to complete disclosure returns. The review should give consideration to disclosure returns only being completed by staff classified as senior staff.

‘Appropriate access’ should also take into account impacts on privacy and personal security particularly disclosure of property information where a councillor or staff member (and their families) reside. Disclosure in the public interest must be fairly balanced against privacy and personal security of councillors and designated staff. Consideration of privacy and personal safety is currently contained in section 739 of the Act.

13. 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.

Comments

This proposal is supported.

14. 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.
Comments

The Taskforce have noted that financial governance and management provisions are highly prescriptive and process driven framework that is not necessarily aligned with IPR. There are suggestions that financial reporting should align towards systems and risk management rather than process prescription. However, few details are offered as to how this would operate.

Most of the issues relating to Financial Governance such as rates, rate pegging, concessions for charities and religious bodies etc. have been deferred to Panel recommendations.

There is insufficient information available to provide comment.

15. Procurement

The Taskforce proposes:

i. the adoption of a more principles-based enabling approach to procurement combined with a medium level of regulation designed to ensure support of the principles of value for money, efficiency and effectiveness, probity and equity, and effective competition.

ii. in relation to the current tendering threshold of $150,000 rather than the legislation setting a dollar value threshold a more flexible principles-based approach be taken to councils setting the threshold based on risk assessment of the proposed procurement.

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.

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.

Comments

Council supports either increasing the current tendering threshold of $150,000 or adopting a more flexible principles-based approach or risk assessment for determining circumstances for tendering. The dollar amount does not indicate the level of risk nor complexity of the requirements.

The Act should be amended 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.

The Act, Regulations or guidelines particularly relating to Tendering must consider that much procurement is increasing via electronic systems and therefore much of the Act and Regulations is increasingly dated or obsolete. Regulations of council procurement should 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.
16. Capital Expenditure Framework

The Taskforce proposes 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.

Comments

Council supports this proposal.

17. 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.

Comment

Council supports this proposal, particularly streamlining of the PPP approvals process which can be quite exhaustive and potentially add significantly to the project cost.

18. 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.

Comments

Council supports the Taskforce proposal. As compulsory acquisition of land overrides private rights of a landholder it is important that adequate checks and balances are maintained to ensure powers are used appropriately. Council agrees that land acquisitions should be included in IPR processes.

19. Public Land

The Taskforce proposes:

(i) the current processes for council land management, being complex and inconsistent with the Crown Lands regime, be simplified and complementary.

(ii) the Local Government Act:
• requires 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 appropriate to the current and future needs of the community
• cease the need for separate plans of management for public land to be prepared and maintained, and in lieu, utilise the asset management planning and delivery program
• cease the need for a separate report to be obtained from the Department of Planning and Infrastructure where proposed leases and licences of public land are referred to the Minister for Local Government for consideration.

Comment

Council supports the proposal to harmonise Council public land management processes with Crown Land management.

Council acknowledges that public land needs to be managed as assets through the IPR framework and supports the requirements for maintenance and renewals to be transferred under Asset Management in IPR. With adoption of asset management plans, the requirement for Plans of Management to develop extensive plans including objectives, performance targets, land and building improvements etc is not necessary.

However, Council believes that the use and protection of public land, which is a critical community asset, should retain some elements of the current system of public land management.

Council supports maintaining classification of operational and community land. Community land classification provides protection for land which is primarily held for use and access by the community such as parks and reserves. Land which is held for operational purposes has a different purpose as public access may be limited or restricted or land disposed of without significant impact to community amenity.

Council supports maintaining plans of management, albeit in a simpler form than the current requirements, especially for significant land or environmentally sensitive areas.

There is also benefit in maintaining simplified plans of management for all public land, under care or control of Council, which could be combined with land registers. It is recommended that plans could include land and ownership descriptors (including maps), setting out permissible uses of public land under Council care or management, classification of land (eg community or operational), details of any leasing or licencing arrangements, reference to any zoning or
planning uses or restrictions etc. As previously stated, Plans of Management should not contain maintenance, renewals or proposed acquisitions. These should be in IP&R plans and accounted in asset management strategies and plans.

Significant change of use or disposal of public land, particularly parks and reserves, have impact on the community. Property portfolios need to be managed and good management of community assets can involve change of use to meet community needs or disposals in order to fund acquisitions or upgrading of other facilities. However, there needs to be safeguards in place to ensure valuable public assets are properly managed in the public interest. Council notes the Taskforce recommendation that “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” but would need further information about how this would operate in practice to ensure the community rights are not reduced in a new Act.

Council supports the retention of 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.

Council supports abolishing 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.

20. Approvals, Orders and Enforcement

The Taskforce proposes:

(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.

(ii) within this framework, the prescriptive processes of approvals and orders be streamlined and, subject to risk assessment, be placed into regulations where possible, allowing the Act to focus on high priority areas and principles.

(iii) certain approvals be repealed or transferred to other legislation, such as the installation of manufactured homes and the operation of caravan parks and camping grounds. Installation of domestic oil and solid fuel heating appliances should be transferred to the Environmental Planning and 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.

(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.

(v) to have regard to the findings and recommendations of the reports by IPART as they affect local government that are due mid-2013.

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.
Comments

Council broadly supports the intent of the Taskforce proposals, especially recommendations to regard to duplications of legislation which causes significant confusion but notes these may be affected by the outcomes of the IPART review in regulation and red-tape.

21. Water Management

The Taskforce will await the report and 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.

Comments

Not applicable to Strathfield Council.

22. Performance of Local Government

The Taskforce will await the report and recommendations of the Independent Local 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.

Comments

Performance of local government is measured through a large number of reporting requirements including Annual Reports, Annual Financial Statements etc. However, this matter is under consideration by the Independent Panel and therefore, comments cannot be made at this time.

23. City of Sydney

The Taskforce proposes that a separate Act for the City of Sydney be retained Act (pending the report and recommendations of the Independent Panel) noting that the Council is also subject to the provisions of the Local Government Act.

Comments

Not applicable to Strathfield Council.

REFERRAL FROM OTHER DEPARTMENT

No referral was required.
FINANCIAL IMPLICATIONS

There are no financial implications.

Report approved by:

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