Local Government Reform in New South Wales

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Background paper for workshop with Snowy River Council - the role of the NSW Independent Local Government Review Panel, and options for the Council

LOCAL GOVERNMENT REFORM IN NEW SOUTH WALES

INTRODUCTION, OVERVIEW AND CURRENT TRENDS

1   Introduction

This background paper serves a twofold purpose: first it provides an overview for elected members of the background to the current local government reform process in New South Wales; secondly it poses a number of possible options for the Council's consideration as it prepares to respond to the forthcoming draft report of the Independent Local Government Review Panel (the Panel).

Snowy River, as a member of the South East Regional Organisation of Councils (SEROC), has been a participant with its partners over the past six months or so in considering the implications of local government reform for the SEROC councils, and ensuring that the Panel is adequately briefed on those matters which the councils believe it should treat as priorities. As one example, the SEROC submission to the Panel strongly emphasised the need for councils either to be able to rate state government lands, or receive adequate alternative funding for the costs they incur in providing services to non-rateable State lands.

The overview examines the nature of the current reform process, highlighting the quite significantly different emphasis from recent state based reform initiatives across Australia. It is followed by sections dealing respectively with the drivers for change including major trends influencing the environment for local government, then the key points from the submission which SEROC councils made to the Panel prior to the release of its case the change discussion paper and next with aspects of the proposals contained in the panel's discussion paper.

The final three sections of the paper consider possible options for Snowy River Council as the basis for a workshop discussion, put forward some possibilities for sub-Council governance and present conclusions.

2   Overview

The present New South Wales local government reform process can be placed in the context of a century of reforms across Australia which has included different approaches in different states, a changing emphasis from cost and efficiency (Victoria in the 1990s) to building the strategic capacity to cope with complex modern societies (Professor Sproat's work on inner Sydney in the early 2000s; the Queensland reforms; the Independent Panel's emphasis on strategic capacity), to the Panel's focus on the local government system, and not just local government on its own.

This emphasis by the Panel should be seen as more than just the next step in a process of gradual evolution; instead it should be seen as something of a step change in thinking about the place of local government in the governance of our societies.

The Panel sees the local government system as encompassing not just councils themselves, but peak organisations, state government agencies involved in regulating or working with local government, employee organisations and others. It sets out a number of elements of an effective local government system including:

- A range of effective mechanisms for state-local consultation, policy development and operational partnerships, linked to the State Plan and regional coordination framework.

- Integrated strategic planning involving state and local governments as partners at all levels.

- A local government Association that is focused on strategy; a well-informed, dynamic advocate; a leader in reform; and a trouble-shooter for dysfunctional councils or councillors.

But it's more than just the mechanics of organisational structure and arrangements for coordination/collaboration; it's actually a vision of local government at the centre of good governance of its communities, bringing together the activities of the public sector at whatever level to produce the outcomes the community seeks. It expresses this as:

> The future is challenging but also full of potential. Local councils must embrace the challenges and realise the potential. They can be catalysts for improvement across the whole public sector. They can demonstrate how to tackle complex problems by harnessing the skills and resources of communities, and how effective place-shaping can boost the State's economy and enhance people's quality of life. (Better, Stronger Local Government, p3 http://www.localgovernmentreview.nsw.gov.au/documents/LGR/Stage%20One%20Consultation%20-%20The%20Case%20for%20Change.pdf).

Nor is this just a one-off view on the part of the Panel. The recently signed Intergovernmental Agreement to Guide New South Wales State-Local Government Relations on Strategic Partnerships (8 April 2013 available at http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Intergovernmental

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includes principles such as:

- State and Local Government will work together as drivers of change and improvement to achieve strong communities through partnership.

- State and Local Government will engage with each other collaboratively and with a shared commitment to joint problem solving.

The occasional cynic may respond by saying that of course intergovernmental agreements always contain that kind of rhetoric; the real issue is what people do once the ink is dried on the paper.

There is more evidence though that this emphasis on greater collaboration between state and local government, and the central role of local government in the governance of its communities, is actually a critical part of the current reform process. On 4 April 2013 the Local Government Acts Task force released its discussion paper on a new local government act for New South Wales (see: http://www.dlg.nsw.gov.au/dlg/dlghome/documents/information/A%20New%20Local%20Government%20Act%20For%20NSW%20-%20Discussion%20Paper%20-%20April%202013.pdf). Its proposed role for local government is:

> The role of local government is to lead local communities to achieve social, economic and environmental well-being 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 priorities 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

Not only is the Panel focused on the local government system as a whole, it is also picking up on the recent shift in thinking about the structure of local government, moving from a purely size/cost based approach to a focus on strategic capacity and stating as a principle that each community needs local government with the necessary strategic capacity. The Panel drew on a recent Australian Centre of Excellence for Local Government report[1] which quoted the Queensland Local Government Reform Commission's description of what this concept means:

> *The challenges confronting Queensland in the coming decades require governments of all levels to be high capacity organisations with the requisite knowledge, creativity and innovation to enable them to manage complex change….This requires a local government structure which responds to the particular characteristics of the regional economies emerging over the coming decades, recognising communities of interest are developing rapidly and differently across the regions due to improved transportation, telecommunications and economic interdependencies. This structure needs to*

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[1] Consolidation in Local Government: A Fresh Look available at http://www.acelg.org.au/upload/Consolidation%20Final%20Report%20Vol%201_web.pdf

give rise to local governments capable of responding to the sometimes quite diverse demands by these communities and be of a sufficient size and scale to generate cost efficient and effective services.

This includes being able to attract and retain high calibre staff where the issue is not just salary and other costs, but offering challenging career opportunities which extend peoples' capabilities. It also includes resilience; having a sufficient depth of capacity to cope with changes in staffing, and unexpected demands, especially in areas of activity requiring high technical or professional knowledge, experience and competence.

The Panel's stated objective is to build strategic capacity across the sector. This could involve:

- Extensive restructuring in metro and major urban areas.

- Enlarged and strengthened regional cities.

- Amalgamations and/or robust regional entities ('County Councils') elsewhere.

In the Panel's view, the resulting councils/regional entities should become:

- Financially secure with capacity to contribute substantial resources to joint State-local efforts (eg by leading many RAP projects).

- Credible and valued partners in strategic planning, infrastructure provision and service delivery.

- Able to operate sustainable water, sewerage and waste management utilities.

- Capable of expanding into further roles over time (eg regional environmental management, NRM).

The Panel has also posed the following questions which start to give a signal of how it might handle recommendations on future boundaries:

- How could the 'next generation' Regional Action Plans evolve as joint State-local strategic plans with agreed implementation schedules?

- Can a single set of boundaries and State-local coordination groups be established at regional/sub-regional level for both State Plan and DPI regional strategies?

- How could re-shaped councils play an enhanced role in implementation of the new metropolitan strategy and regional strategies?

- What kind of policy and administrative arrangements are needed to pursue such an agenda?

One implication of this approach is that the Panel wishes to see larger units of local government, placing a strong focus on amalgamation versus other means of achieving strategic capacity (comprehensive shared services?). The reference to "a single set of boundaries and State-local coordination groups be established at

regional/sub-regional level for both State Plan and DPI regional strategies" carries an implication that the Panel may be considering regional action plan groupings as a basis for new local government boundaries, at least in terms of what it sees as regional level local government activity (infrastructure, strategic planning, development control, state/local government relationships among others).

It's worth thinking a little bit more about what could lie behind this; if the state does have a strong commitment to working in partnership (and this is a reasonable inference from much of what it is currently doing), then that has some very real implications not just for the role of local government, but also for how it is structured. Strategic capacity is not just about how to deal with complexity but, in the context of state/local government relationships, how to make partnership working effective. It's about moving beyond easy public rhetoric to in-depth and evidence-based discussion of priorities for both State and local government, and how to give effect to those.

It means much more than just arriving at informed decisions around the partnership table; it means the ability to deliver. The practicalities include it's virtually impossible for individual state agencies to deal in-depth with 152 separate local authorities. It's essential from a state government perspective to be able to work with groupings of local authorities however constituted. If one thing is clearer than another, it's that partnerships don't work if there is an agreement around the table, and then one side of the discussion - individual councils - take decisions back to their own council tables and decide not to take part. Partnership working demands the ability to take often tough decisions which everyone knows will be implemented.

It's another aspect of strategic capacity and it points directly to the need for some form of consolidation - it might simply be strong regional groupings (perhaps enhanced county councils) which are able to make binding commitments on behalf of their members; it might need to be amalgamations of individual councils into units of the scale adequate for effective state government/local government partnering.

3   Current trends influencing the environment for local government

Some of these will be immediately obvious and familiar; some much less so. This paper picks out six as really important for shaping the future of local government in New South Wales. They are: globalisation; the rise of metropolitan centres; demography; fiscal issues; governance; and community engagement. We also make brief comment on the SEROC/ACT relationship.

Globalisation

Globalisation has drastically changed the trading environment for Australia's exporters, and firms which compete against imports. Some have benefited from a commodity boom (now lagging a little). Most have faced a dramatic increase in competition and pressure on costs.

The implications for local government may not be immediately obvious, but they are profound. Local government needs to do everything it can to reduce the cost pressure on business - both the direct cost of rates and charges and the indirect cost of how local government does things. It's all part of making sure Australian business can survive in an intensely competitive world.

What does this mean in practice?

- Standardising regulation, engineering specifications et cetera across local government (see the Australian productivity commission report on local government as regulator - available at: http://www.pc.gov.au/__data/assets/pdf_file/0007/118564/local-government-volume1.pdf).

- Putting in place new structures for owning, managing and funding infrastructure to ensure least cost and best practice (the Ernst & Young report: Strong Foundations for Sustainable Local Infrastructure, available at: http://www.regional.gov.au/local/lgifr/files/Strong_foundations_20120615.pdf).

- Constantly looking for new and better ways of doing what you do. Collaborating with neighbours and others to build capacity and capability, improve outcomes and reduce cost. A much stronger emphasis on shared services, and stronger regional structures.

It's easy from within a council to underestimate the significance of the pressure for local government to organise itself, not just Council by Council, but across the sector to ensure that its activities impose the least possible cost on businesses and households, especially businesses which are exposed to international competition. Local government underestimates this at its peril. There is a constant and increasing pressure on State governments and the Federal government to intervene in order to lift the performance of local government. Even where it looks as though the relationship between local government and other tiers of government is collaborative, and issues of change are being developed in partnership, in the absence of real progress, the risk for imposed change is significant. Councils need to look no further than the Queensland experience where a state government,

disappointed by the lack of progress through a collaborative process, unilaterally imposed major change.

The Rise of Metropolitan Centres

In 2007 the percentage of people living in urban centres passed 50%. By 2050, that figure will be nearly 70%.

Contrary to what most of us expected with the rise of the Internet, cities are more and more a magnet for high skilled people and the firms which employ them. Face-to-face contact has become more, not less important. There is no better evidence of this than the investment which the world's leading Internet firms such as Google, Facebook and Yahoo have made in building campuses to locate their staff together.

Metropolitan centres, globally connected and with concentrations of high skilled people, are more and more the drivers of the international economy. In Australia, the inexorable growth of the major capital cities is driven by the location decisions of tens of thousands of multinational enterprises (Sydney will experience 75% of New South Wales' population growth to 2036).

It's a huge challenge for Australia's governments as they ensure capital city infrastructure remains (becomes) competitive. It also means that perhaps the most significant challenge facing the Panel is recommending arrangements for the governance of metropolitan Sydney which will support its role as a global city.

Demography

Developed countries, including Australia, are facing dramatic changes in the make-up of their populations - ageing populations, declining fertility rates, shift in migration patterns and much more.

Combined with the rise of metropolitan centres, expect to see most growth in or adjacent to large cities, some in regional centres, some in preferred retirement destinations ("sea change" councils). Most rural or regional councils will face static or declining populations. Agricultural productivity is a special challenge - replacing people with machines at the same time as skill requirements rise will create a major recruitment and retention problem for the primary sector - and a need for close partnership working between primary producers and local government to provide the environment and quality of life high skilled staff will require for themselves and their families.

Challenges range from coping with rapidly ageing populations, to managing decline, to coping with the pressures of growth, especially on the fringes of metropolitan centres (for SEROC, the C+ 1 councils (the ACT plus councils within an hour's travel) will face this).

Fiscal issues - local government

For local government, this usually means financial sustainability -where do you get the money to meet infrastructure needs is the obvious problem for most councils.

Rate capping is an issue, but IPART's management of exemptions is reducing the financial pressure (but not necessarily the sense that local government can't be

trusted, which remains one of local government's principal concerns with the rate capping regime). Sustainability of smaller and more remote councils is problematic. The Financial Assistance Grants review could help by recommending removal of the minimum 30% per capita element in the distribution.

The ability to generate income and/or underpin the viability of council activity through contracting with other levels of government is also important. There is a strong case, as with the RMS contracts currently under review, for the state government to take a "whole of society" approach to costs and benefits, and not a narrow financial accounting approach.

Councils could also look at other possibilities for increasing resources within the community, using their leadership role to encourage the development of community based initiatives outside Council - community banking is a well-known example. The establishment of community foundations to encourage locals to gift or bequest money for community purposes is another which shows very real promise.

Fiscal issues - higher tiers of government

The global financial crisis has been a wake-up call. It almost certainly marks the end of the "send the bill to the grandchildren" approach to public debt.

In Australia both Federal and State governments are under continuing fiscal pressure - there is little if any spare money. Instead, the pressure is to find ways of doing more with less.

The biggest expenditures by state and Federal government are on major social services. Internationally, there is growing recognition of the important role local government can play in this area - not by funding, but by using its unique local knowledge, skills and networks. The evidence is that involving community level knowledge in the design, targeting and delivery of major social services gets better outcomes and reduces cost. It's a compelling argument for higher tiers of government to work more closely with local government (recent work associated with the UK government's community budgeting initiative, which brings central government and local government together to pool funding for service delivery, suggests that savings can range as high as 15-20%).

Governance

Current legislation draws a distinction between the policy setting role of the Council, and the operational/implementation responsibility of the general manager. The separation is supposed to reflect the separation within the typical company between the role of the board and the role of executive management. In practice, councils have far less authority as against management, than boards in public companies do.

The same legislation also in practice assumes that all local government activity is basically similar in kind so that the same mix of governance and accountability arrangements will be equally effective whatever the activity. The reality is very different. Local government activity ranges from almost purely public, to major activities which are almost indistinguishable from private sector activity (infrastructure development and management; managing council property assets…).

In combination these provisions limit the ability of elected members to exercise strategic leadership, and also restrict the ability of the community to get best value from its assets (for example, because councils seem to lack the equivalent of commercial decision-making powers, especially when it comes to the timeliness of decision-making and implementation).

In recent years concerns over the imbalance between the role and powers of elected members on the one hand and management on the other have focused on the role of the Mayor as the leader of the Council and the community. It's increasingly common internationally for councils to be led by elected executive mayors. In Australia, Queensland's mayors now have significant powers in relation to the budget and the management of the chief executive officer. New Zealand is also reinforcing the power of mayors.

The Panel has signalled it will recommend strengthened mayoral powers much along the lines of New Zealand, including giving the Mayor the power to establish committees and appoint committee chairs.

Finally, we note that the use of Council owned companies, with well-designed post-establishment governance provisions, is becoming an option. We expect the Panel to recommend greater opportunity for the use of Council owned companies, especially as one alternative to regional organisations of councils as a means of owning and managing significant Council assets and/or multi-Council activity (another is likely to be strengthened county councils).

Issues in the Current Structure and Governance of New South Wales Local Government

An immediate issue for elected members is the extent to which their role is dominated by process, including the very extensive requirements associated with the 10 year community strategic plan, resourcing strategy, delivery plan and operational plan. Combined with the separation of powers between elected members and executive management, the present environment tends to undermine rather than support strong strategic leadership from elected members.

'Fit for purpose' structures is another important governance issue. The Ernst & Young report on sustainable local infrastructure points to a number of weaknesses within the regional organisation of councils structure and argues for a different form of multi-Council arrangement with the capacity and capability to own, manage and fund infrastructure at scale.

The expectation is that this will be addressed by the Panel through recommendations for a stronger form of regional collaboration, possibly new powers for the formation and governance of local authority owned companies, possibly an enhanced form of county council. Experience elsewhere, including New Zealand, suggests the local authority owned company option can be a very powerful tool which both adds value for ratepayers, and improves accountability to elected members. It comes with one significant caveat; it does require very real investment in the skills and understanding of governance, and expert support in appointing and monitoring the boards of such companies (as a simple example, in the past it's been common for councils to appoint councillors to such boards - this is now widely seen as generally creating a conflict of interest). Similar issues will arise if the Panel recommends a

stronger form of county council as a vehicle for undertaking major regionwide activity.

Community engagement

Electing your councillor used to be the main means of engagement between citizens and Council. There is a growing body of research which supports the argument that today it's more common for citizens and communities to want the right to share in making the decisions which affect where they live, work and play. This shouldn't be very surprising. Electing councillors is not a good way of getting binding commitments on how specific local issues will be decided. At best it gives the community as a whole an opportunity to determine the broad flavour and approach of the Council.

This changing attitude is well illustrated by the following extract from a blog by the general manager of one of Sydney's northern beaches councils commenting on a community satisfaction survey:

What has surprised the council about the survey results is the fact that residents appear to be less concerned about what I would call the 'traditional' activities of local government – and much more interested in what could loosely be termed participatory democracy. The survey findings go on to say that out of ten drivers of satisfaction – what residents really want – the top two were access to Council information and support and community involvement in decision-making. Development came third, domestic waste fourth and perhaps most surprising of all, maintaining local roads came seventh.
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Against this background it should be no surprise that the Panel has signalled that its draft report will include recommendations on sub-Council governance - how to give communities within the area of a Council an opportunity to have a say over the decisions which affect them.

The SEROC/ACT relationship

The memorandum of understanding between the ACT and New South Wales governments emphasises the importance of the cross-border relationship.

In practice, there are very significant interdependencies, covering a wide range of services, infrastructure, economic growth and more. Although the MoU itself is between the two governments, the practical reality is that dealing with the specifics will in most instances involve close working between the ACT government and SEROC councils, especially those within what is effectively the Canberra metropolitan region.

This provides what amounts to an extra opportunity for at least those SEROC councils within the C+1 grouping to leverage off the ACT in building strategic capacity especially in areas such as infrastructure, strategic planning and major recreational and cultural facilities.

4   Key points from the SEROC submission to the Independent Panel

The SEROC submission was prepared after discussions with the SEROC board with the objective of influencing the Panel's Case for Sustainable Change paper, and on the basis that it should cover those matters which the SEROC board saw as essential to bring to the Panel's attention. The board recognised that submissions to the Panel would cover a very wide range of matters, but thought it important to be focused on those which were really a priority. The submission covered: a preferred approach to the review; rating and funding; governance; state government/local government collaboration; consolidation; and SEROC/ACT relationships.

<u>A preferred approach</u>

The SEROC board was concerned that too much public debate in recent years has over emphasised the service delivery aspect of local government. The submission emphasised the widely different situations facing different councils. It recommended the Panel endorse the primacy of local democracy as the core role of local government, and that the Panel support changes to the charter section of the Local Government Act, and to section 51 of the New South Wales Constitution act, to endorse local government's role in local democracy.

<u>Rating and Funding</u>

Rate peg

The Panel was invited to recommend abolishing the rate peg, both because of evidence of the perverse impact it has had on local government funding and investment (especially in infrastructure), and its implicit suggestion that local government can't be trusted.

Crown Exemptions

State land is exempt from rating. This is a significant burden on councils such as Eurobodalla and Snowy River which have extensive state and national parks within their boundaries. The Panel was asked to support either a direct repeal of the exemption (potentially problematic because of difficulties in valuing state lands when they are not "in the market"), or to recommend an urgent state government review with the objective of ensuring that local authorities are not, by virtue of exemption provisions, required to carry significant costs which they cannot recover from users or an acceptable proxy.

UCV versus ICV

The board invited the Panel to recommend a change in the valuation base from unimproved capital value to improved capital value, arguing that this was justified because the 'discount' received by property owners whose properties carry substantial improvements unfairly distributes the burden of funding. The Board did recognise that this is a complex issue, and one on which it is not really possible to establish a consensus across the whole community.

The pensioner rebate

New South Wales is the only state which requires local government to contribute to the cost of funding the pensioner rebate (the funding is shared 45:50:5 by councils, the New South Wales state government, and the Federal government).

The board argued that the rebate is in essence a government income support measure from which it follows that the rebate not be funded by ratepayers. Furthermore, the board noted one practical effect of part-council funding is that the higher the proportion of pensioners entitled to the rebate in any given area, the greater the extent that pensioners themselves end up carrying a significant part of the cost of the rebate, effectively part defeating its purpose.

A local government financing authority

The Ernst & Young report on sustainable local infrastructure recommended the establishment of a national local government financing authority - an entity which would borrow in the market on behalf of local government effectively aggregating the borrowing requirements of all of Australia's local authorities (or at least all of those which wished to use the authority's services). The Ernst & Young argument was the scale of borrowing which would be necessary to access funds on a least cost basis (issues of scale of borrowing and liquidity in the secondary market were the principal factors).

Evidence from South Australia and New Zealand satisfied the SEROC board that such an authority would be effective in reducing the cost of borrowing. It invited the Panel to support the establishment of a local government financing authority, preferably at a national level.

Governance

The SEROC submission argued that the present statutory provisions for the governance of councils themselves (the powers and responsibilities of elected members and the Mayor) and guidance in documents such as the Councillor Handbook, reflect a confused situation in which the actual role, and the role set out in statute, are often quite different.

There is a need to strengthen the strategic role of the Mayor in particular and councillors in general to cope with the major long term shifts now confronting communities. The SEROC submission instanced three; agricultural productivity (long-term recruitment and retention issues); population ageing; the greater Canberra metropolitan area.

The Board's recommendations included revisiting the provisions of the Council charter to highlight the role of the Council, and elected members, in providing strategic leadership to the community and strengthening the role of the Mayor, probably along the lines of the recent changes in Queensland but incorporating specific responsibility for the Mayor in taking the lead in building relationships with key internal and external stakeholders.

The board also recommended that remuneration should reflect the responsibility and the roles of councillors and mayors, and that there should be a stronger emphasis on

professional development, reflecting the practice in a number of other occupations where ongoing professional development is required.

In respect of council activity itself, the SEROC board noted the existing powers to form council owned companies, and invited the Panel to encourage the use of council owned companies, and advocate for section 358 of the Local Government Act (which authorises the use of companies) to be amended by removing the requirement for ministerial approval but including provisions for post-establishment governance following the New Zealand practice for council controlled organisations. This is designed to strike an appropriate balance between the powers of boards to manage companies, and proper accountability to elected members as the owner's representatives.

State government/local government collaboration

The board's submission commented on three separate aspects; more effective use of public assets within the community; collaboration in the delivery of and access to state government services; cost shifting and other state interventions.

State government and its entities together own a wide range of property assets within every New South Wales Council district. The Government's Property Assets Utilisation Task force report contained a number of recommendations supporting more effective use. The SEROC board argued that, where any such assets are underutilised or surplus to requirements, there should be a presumption in favour of making them available for use by the community. There will be potentially complex issues of terms of use, and cost. These should be dealt with by the state government (the Department of Finance and Services), and the new joint Association agreeing a protocol. The Panel has been invited to recommend accordingly.

Contracting with state agencies can be an important activity for councils. RMS contracts are an obvious example. The SEROC board recognises it is reasonable for RMS to seek efficiency but this should be seen from a 'whole of society' perspective. The Panel has been recommended to invite RMS to ensure that any decisions it takes on contracting with councils for the delivery of road maintenance services are based on a 'whole of society' approach to the costs and benefits, and not solely on the impact on RMS' bottom line.

A further opportunity is facilitating/delivering access to services provided by other tiers of government. There is a lot of experience internationally, and increasingly in Australia, demonstrating very real benefits from involving local government in facilitating access to services delivered by other tiers of government. Benefits can include more efficient targeting and delivery, gains from collaboration, and better access for the public. The evidence also suggests the potential for significant savings to higher tiers of government, thus helping ease fiscal pressure.

In a related initiative, there may also be merit in individual councils providing or assisting the provision of back-office services for local NGOs, in effect investing to develop local capability.

Next, in respect of cost shifting and other state interventions, the British Columbia provincial government has developed a set of principles for provincial/municipal relations which includes a requirement that the Province "must not assign responsibilities to municipalities unless there is provision for resources required to

fulfill the responsibilities.". The board has invited the Panel to recommend this as a precedent for New South Wales legislation. (Note: the recently signed intergovernmental agreement includes the following statement on cost shifting "Where local government is asked or required by the State Government to provide a service or function to the people of New South Wales, any consequential financial impact is to be considered within the context of the capacity of local government.")

Consolidation

The SEROC board expressed its concern that the Panel's terms of reference do appear to have a bias towards amalgamation. The board proposed that amalgamation, and the loss of local identity and local leadership which often accompanies it, should be seen as a last resort, not the first resort. It strongly recommended the Panel give priority to ensuring local authorities have the appropriate tools and support required to establish viable shared services operations **before** considering amalgamation as a means of increasing efficiency/capacity.

SEROC/ACT relationships

This part of the submission recognised the issues arising from the fact that in practice a number of SEROC councils are part of the greater Canberra metropolitan area. It argued this will require extensive collaboration between the ACT government and the adjacent councils. This could include sharing ownership and management of major facilities and coordinating regulatory and other practices.

One possibility for facilitating this is the formation of a company with the ACT government and relevant SEROC councils as members.

The submission invited the Panel to recommend that the New South Wales state government endorse the potential for joint activity between the ACT government and councils within the Canberra metropolitan area through either or both of companies limited by guarantee and limited liability companies.

5   The approach being taken by the Panel and its implications

The Panel's approach is clear from the discussion document, the Case for Sustainable Change, which it released in November (available at: http://www.localgovernmentreview.nsw.gov.au/documents/LGR/Stage%20One%20Consultation%20-%20The%20Case%20for%20Change.pdf).

Its emphasis on the local government system as a whole rather on local government in isolation has led it to spell out what it sees as the important elements of an effective local government system:

- A range of effective mechanisms for state-local consultation, policy development and operational partnerships, linked to the State Plan and regional coordination framework.

- Integrated strategic planning involving state and local governments as partners at all levels.

- A local government Association that is focused on strategy; a well-informed, dynamic advocate; a leader in reform; and a troubleshooter for dysfunctional councils or councillors.

Much of this emphasis is being picked up by the work of the Local Government Acts Task force. As a central part of developing a new and simplified local government act, the Task force proposes that:

> Integrated Planning and Reporting 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.

The Panel, for its part, has identified resolving local government's infrastructure challenges as an area of high priority, stating:

> Tackling local infrastructure needs and backlogs warrants the highest priority. This will require continued efforts to make more efficient use of available resources, but the underlying issues of local government revenues and the limited technical capacity of many smaller councils must also be addressed.

This comment needs to be seen in the context of the Ernst & Young report on sustainable local infrastructure. Taken together, the Panel statement and the Ernst & Young report point to the possibility of the Panel recommending that the responsibility for the ownership, management and development of infrastructure should be shifted to a regional level - with the nature of the regional level yet to be determined (as something of a point of reference on what could be possible, it's a worth noting that the Tasmanian State government has twice recently restructured water and wastewater services, first by combining them into three separate council owned but state regulated companies and then more recently merging those three companies into one which will commence operations on 1 July 2013).

The Panel has also picked up on the signals from sources such as the recent Australian Productivity Commission report on local government as a regulator, noting

the need for a concerted effort to improve efficiency, productivity and competitiveness of New South Wales local government. This is a response to the issue traversed in MDL's briefing to the SEROC board on the importance of minimising local government's cost impact on the tradable sector.

As well as the obvious implication that achieving strategic capacity may require the merger of smaller councils, the Panel has made it clear it intends presenting recommendations on two other significant structural issues; the regional level and the sub-Council level.

At the regional level the interest is in creating a structural form to overcome the identified problems with the Regional Organisation of Councils model, which include a very cumbersome decision-making process, because of the requirement that matters be referred back to each individual Council for decision. The Panel's preference currently seems to be an enhanced county council model. An alternative is enhanced powers for local authorities to form council owned companies where the major issue at the moment under New South Wales legislation is the lack of any robust post-establishment requirements. There is interest in the New Zealand model for what are known in that country as council controlled organisations, which includes a strong statutory framework for regulating post-establishment governance, and managing the balance between the need for commercial effectiveness on the one hand, and democratic accountability on the other (note that the Local Government Acts Task force discussion paper contains no suggestion in respect of new forms of regional bodies, stating that it is awaiting the Panel's recommendations).

Whatever the model finally recommended by the Panel, it seems clear that it has decided local government activity with a regional impact needs to be the responsibility of strong regional bodies not subject to the whim of individual councils. We recommend that Snowy River treat assessing the nature and composition of any proposed regional body as a critical issue in its response to the forthcoming draft report. We also note the probability, given what the Panel has recently been stating, that a future regional body is likely, all things being equal, to be designed so that it can work well within the Regional Action Plan framework.

In respect of the sub-Council level, the Panel has stated:

> Another possible gap in structures occurs at the 'sub-Council' level. This has not been a major issue in the past, simply because there are so many councils and only a few have really large populations. However, with the expected growth of metropolitan fringe councils around Sydney to populations of 250,000 or more, there may be a case to make available a sub-Council option along the lines of New Zealand's community boards. A similar arrangement could also provide a suitable form of local governance for communities in some rural and remote regions. However, it may be possible to avoid the need for additional structures by strengthening the role of ward councillors and improving community engagement and customer service systems.

We are expecting the draft report of the Panel to be more positive than this statement on the desirability of a new form of governance at the sub-Council level. Reasons include the Panel's own emphasis on the importance of the 'local' in local government and its description of the local government system as involving local government plus state agencies and others. This places a strong emphasis on having

in place the local capability to support collaborative working, especially in the delivery of and access to significant services - which will remain extremely important for smaller communities.

The Panel has signalled it will make recommendations which significantly increase the powers of the Mayor with the objective of underpinning the Mayor's role as leader of the community. Its discussion paper proposes the Mayor:

- Being the designated 'community leader' and 'principal representative' of the Council.

- Oversighting the performance of other councillors including code of conduct issues.

- Establishing committees and appointing chairs.

- Guiding the preparation of the Community Strategic Plan, Delivery program and budgets.

- Ensuring adequate community engagement and consultation on key decisions.

- Participating in inter-governmental relationships at regional, state and national levels.

- Providing advice and strategic direction to the General Manager in accordance with the Council's policies.

In tandem with this the Panel suggests mayors should be popularly elected.

The proposals are consistent with developments in other jurisdictions, where enhancing the role of the Mayor has been seen as a necessary step, both for enhancing local democracy and accountability, and in underpinning community leadership[2].

The Panel does suggest that these changes might apply only to larger urban and rural councils with smaller councils retaining a modified version of the present arrangements. One issue that raises for smaller councils is the impact on their ability to make their case in competition with other councils if they have a significantly weaker leadership structure.

In summary, the Panel's discussion document and subsequent statements make it clear that although Panel members have a strong attachment to the values of local democracy, they are also taking a realistic and evidence-based attitude to the need for change. It's a strong signal for New South Wales councils that very significant change is now underway and they should be determining how best to work with change in order to get the best outcomes for their communities.

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[2] There is a potential conflict between the Panel's recommendations, and the approach which the Task force is taking to clarifying the separation of roles between elected members and the general manager with the proposal that the general manager be responsible for determining the organisation structure - a responsibility which may not align well with the power of the Mayor to establish committees.

6   Options for Snowy River Council

Introduction

This section is prepared on the assumption that its purpose is to prepare the ground for the Snowy River Council to be able to respond effectively to the draft report of the Panel (expected in late April) with an emphasis on getting the best possible outcomes both for its communities, and for its staff. It canvasses possible options for addressing the Panel's primary concerns including how to build the requisite strategic capacity.

In considering options for the Snowy River Council (and its communities and staff) some assumptions are needed. They include:

- It is highly probable that the Panel will recommend amalgamation as a necessary prerequisite for communities being able to have local government with the requisite level of strategic capacity.

- The Council (and its communities) will want to retain as much of their present local autonomy as possible.

- The Panel's emphasis on the local government system means that options should encompass not just traditional local government activity, but the broader coordination, collaboration and governance role contemplated by the Panel's discussion paper.

- The Panel will propose stronger regional structures in order to undertake what are essentially regionwide activities. These could include the design, procurement, ownership, funding and management of infrastructure, strategic planning and possibly economic development. The form may be either enhanced county councils, or some form of local authority controlled company.

- It is also likely to encourage the greater use of shared services and may recommend services where sharing should be compulsory, perhaps at a regional level.

There is an important preliminary point which cannot be overstated. This is the fact that councils will necessarily be faced with making trade-offs some of which will be inherently difficult. At the heart of this dilemma is whether councils have the ability to make a clear choice; is their priority preserving and enhancing local democracy, or is their priority hanging on to their current service delivery activities?

Experience with local government reform shows that, **all too often**, councils prove unable to make this choice. They want to maintain their local democratic role, but they also want to keep delivering services the way they have traditionally done. When this happens, almost inevitably governments intervene because they believe councils are not capable of taking decisions which need to be made. The Queensland local government restructuring is a classic example. Councils proved unable to take the decisions needed to improve the effectiveness and efficiency and underpinning strategic capacity for service delivery (this would have involved enhanced shared services, and the development of at least some regional organisations with real

clout). An impatient state government decided the only way forward was compulsory restructuring.

Local government in the United States has probably the strongest track record of local government anywhere in defending local democracy. In a very real sense, that's an absolute value, and the core business of local government in every state. In contrast, US councils are very relaxed about who delivers services and how **provided that** the chosen means appears best to meet the needs of their communities. They will happily enter into joint ventures, contract out to third parties (other councils, NGOs, the private sector), withdraw from services if they think that there are better providers and otherwise demonstrate that holding onto things simply because they have always done them is just not part of their normal practice. There is even a group of councils which quite explicitly contracts out all service delivery - they are small councils focused on local democracy, but keen to ensure that services for residents are delivered as effectively as possible (see www.contractcities.org).

Options for Snowy River

This section first considers the question of amalgamation/strategic capacity, then looks at the implications of the "local government system" approach being taken by the panel, and finally considers different options for sub-Council governance.

Amalgamation/strategic capacity

We suggest that the Council approach this issue on the basis that the need to enhance strategic capacity is non-negotiable; the issue is how to enhance strategic capacity, not whether this should be done. This includes the capacity to ensure resilience in service delivery in the longer term, as well as the ability to negotiate effectively with state government especially in areas where a partnership approach is likely to become more common (services for older people; health services; regional economic development among many others).

Given the issues of scale and scope, including the need to attract and retain adequate highly capable staff and provide them with a challenging work environment, addressing strategic capacity necessarily requires working with one or more other councils to build a common resource. Basically there are four possibilities:

- Centres of excellence

- Amalgamation

- Regionalisation

- Shared services

Centres of excellence

Some councils, especially in England, have been developing a Centres of excellence approach under which they will contract with other councils (possibly neighbours, possibly not) to undertake specific services on their behalf. Typically this approach is

IT enabled and depends on the centre of excellence Council being able to provide real time access for each user Council to its own data.

This approach has the advantage of enabling even relatively small councils to build significant strategic capacity provided that they are able to develop a strong client base and, internally, the capability and capacity to deliver services for client councils in a way which is both more efficient, and lower cost than the client Council itself could achieve.

Where this approach has worked best, it has typically been in partnership with one or other of the major private sector firms specialising in enterprise services for local government.

In considering this kind of approach, it should very specifically be approached as the development of a new business, and the same disciplines should be applied including the development of a robust business case, appropriate governance (including ensuring that the people directly responsible have 'fit for purpose' skills and experience) and high-quality risk management.

Under this option, the immediate question is which other council or councils? Does Snowy River see its communities' futures lying with councils close to Canberra, or as part of a regional New South Wales grouping? What is its view on the suggestion that future council boundaries, at least at the regional level, should coincide with those for regional action plans?

Amalgamation

Evidence suggests that amalgamation seldom if ever results in reduced costs, and that the transition process can result in quite major difficulties. A September 2009 survey of mayors and chief executives from some 30 amalgamated councils in Queensland included the following findings:

- Only 41% expect the efficiencies and economies of scale from amalgamation to outweigh the initial costs[3], with the majority of those with this view expecting this to take more than 7 years;

- The major benefits from amalgamation were seen as better planning and development control, and in more efficient infrastructure provision;

- The greatest difficulties relate to expectations about service enhancement or community identity and issues with integrating organisation cultures;

Basically, what this survey emphasises is ensuring that amalgamations are of sufficient scale to achieve a qualitative shift in strategic capacity - simply amalgamating two or three small councils in order to create a larger small council is unlikely to achieve the desired outcome, but certain to result in the additional costs and difficulties associated with transition.

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[3] It should be noted that the Queensland reforms included a three-year employment protection provision for all employees other than the chief executive, which would add somewhat to costs - the Mayor's and chief executives surveyed expected that at the end of the period redundancies could be in the order of 5% of staff.

The implication for Snowy River is that any full amalgamation should result in a new council substantially larger in scale. Implicit in the Queensland approach was an assumption that ideally the necessary scale was perhaps in the order of 200,000-300,000 residents although that obviously needs to be balanced against geographic scale implying a significantly smaller size in rural and regional New South Wales (but expect a debate about whether a larger scale would be appropriate for activities which benefit from significant scale such as infrastructure). It follows from this that the Council should give serious consideration to the possibility that the Panel will contemplate amalgamation with the objective of improving strategic capacity but constrained by a geographic reality which would limit the potential size of any amalgamated council. This will include developing the Council's own case to address whatever proposals the Panel puts forward. One issue for the Council to consider is whether it should be prepared to make substantive submissions on what the Panel refers to as sub-Council governance - what local democratic arrangements should be in place for communities within amalgamated councils?

Regionalisation

An alternative, which still has some of the characteristics of amalgamation, and could be consistent with what the Panel is signalling, is the creation of a two tier structure with the upper tier handling what could loosely be termed 'region-wide' activity with remaining services staying with the existing smaller councils as a second tier. A significant issue for Snowy River under this option is the employment implications if (say) its roading work became the responsibility of a regionwide entity. This may make the option of shared services more attractive.

Under this approach, a single 'region-wide' entity could be given responsibility for infrastructure (the three waters; roading; major recreational and cultural facilities), state government/local government relationships, planning including development assessments and construction certificates, standardising regulatory instruments, managing (but not necessarily owning) councils' property portfolios…

This approach (which we expect to emerge in some form) immediately begs questions such as how is the governing body of such an entity constituted (by direct election, by nomination from constituent councils, by appointment by some form of electoral college against a set of 'fit for purpose' criteria…), to whom and how would it be accountable, and how would any economic surplus from its activities be handled. These are all matters the council should be prepared to address in its submission on the Panel's draft report

Shared services

In theory, a shared services approach could deliver much the same outcomes as amalgamation, and at a lesser cost. In support of this, there are examples internationally (and one or two in Australia) where shared services have gone as far as sharing a chief executive and senior management, and many councils now take the view that any service can be shared or acquired through outsourcing rather than in-house provision.

We strongly recommend that the Council, in thinking through its approach to shared services, be very clear about where its priorities lie. Is it prepared to look seriously at the trade-offs which are necessarily involved, and decide whether its priority is local democracy, or attempting to retain its role in service delivery as far as possible?

In England, where local government has traditionally been quite resistant to the concept of shared services, the need to rethink how local government does its business as a consequence of the present government's drastic cutback in local government funding has seen a very significant shift in thinking. The local authority focused think tank, Localis, in a report "Catalyst Councils: A new future for local public service delivery" (available at: http://www.localis.org.uk/images/Catalyst_councils_12_9_12_WEB.pdf) found that more than a third of respondents to their survey said that there were no services that would have to remain in-house under any circumstances, with a similar number agreeing in their research interviews.

There is an argument that it makes sense to think of a Council as a combination of a community cooperative, and a social enterprise. Much of what is spelt out in the councils Community Strategic Plan suggests that this way of thinking of the Council is not too far removed from understandings within Snowy River's communities.

On this approach there is still an emphasis on the efficient use of resources (waste doesn't really help anybody), but a sense that the primary role of the Council is as the 'soft infrastructure' which can enable its communities, and the people working with it, to develop their own community institutions and practices to help them build on their potential. Practical examples could include:

- The Council acting as a provider of 'back-office services' for community-based NGOs as part of capability building, and enabling volunteers to focus on the purpose of the entity.

- The creation of community foundations as a vehicle for facilitating gifts/bequests to be held long-term for the benefit of the community, an initiative which can fill an important gap as few communities have in place reliable long-term mechanisms for managing this.

- Facilitating the development of a cooperative response to the provision of services to enable ageing in place.

- The development of local financial services such as community banking.

- Facilitating the emergence of social enterprises/worker and/or community owned entities to deliver services on behalf of the Council, and potentially provide the basis for growing community-based businesses (an increasingly common practice in England following the recent reduction in local government revenue, but one which does need to be addressed with some care).

- The Council acting as the facilitator/advocate/enabler in the more effective targeting and delivery of services provided by other arms of government (including the more efficient use of underutilised public-sector assets within the community).

Australia has a very patchy experience with shared services, including difficulties with the usual vehicle through which they are organised, regional organisations of councils. Problems include:

- Often a reluctance on the part of both elected members and management to give up what they see as control.

- Industrial issues.

- Complex decision-making arrangements within regional organisations of councils (the Ernst & Young report on sustainable local infrastructure notes the destination 2036 concern that *ROCs would require legislative recognition, boundary alignment, and the ability to develop models for regional services delivery) [4].*

An alternative model now being developed in New Zealand offers a different and more promising approach to shared services. This is the use of a jointly owned company with a specific mandate to promote shared services. The New Zealand model includes strong post-establishment governance arrangements designed to balance local democratic accountability with a commercial decision-making environment within which the board can operate. At the heart of the New Zealand model is a 'centres of excellence' approach under which individual councils take responsibility for specific services (Snowy River might do this in respect of Development Application and Construction Certificate assessments). An overview of the New Zealand experience is available at:
http://epress.lib.uts.edu.au/journals/index.php/cjlg/article/view/2422/2653

For shared services to be put forward as a serious alternative to amalgamation in order to achieve strategic capacity, Snowy River would need to identify partner councils who were prepared to approach shared services on the basis that everything was on the table in order to preserve their current local democratic structure (and would first need to get to that point itself, so that it could approach prospective partners in a nonthreatening way). Achieving this, especially within a relatively tight timeframe, could be difficult (effectiveness would need to be demonstrated in advance of any likely implementation date for the Panel's recommendations). It would require dealing with a complex range of issues and demonstrating that a group of councils could enable the effective development of shared services within the disciplines of a corporate structure.

It would also be important to bring staff along with the Council so that the development of shared services options was able to take fully into account the interests of staff.

On shared services, the crucial question for the Council to decide is what matters most; hanging on to what you've got, or doing whatever it takes to protect local democracy on the one hand, but ensure on the other that the services provided to your communities continue to meet the service level standards and financial constraints which matter.

The "local government system"

The Panel's emphasis on the "local government system" is consistent with the growing interest internationally in the role of local government in facilitating the

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[4] Strong foundations for Sustainable Infrastructure, p74, accessed at http://www.regional.gov.au/local/lgifr/files/20120622-strong-foundations.pdf

effective design, targeting and delivery of public services, regardless of who the actual funder and provider may be. It recognises local government's closeness to its communities, and ability to tap into local knowledge and networks.

Reflecting this emphasis, the Panel describes the ideal role of local government as:

> Local government is the democratic representative of communities. It is 'close to the people'. It can lead communities. It can be the voice of communities. It can moderate between competing interests. It can create places that make lives better…. To be an effective partner in the broader system of government, local government must be both truly 'local' in the way it relates to communities, and have the ability to address problems and emerging issues at a larger scale.

> At its best, local government demonstrates leadership on some of society's most intractable problems by harnessing resources and acting in a timely way.

There is an inherent tension between this understanding of local government, and the emphasis on building councils with strategic capacity which can only be resolved by ensuring that new arrangements for local government are designed also to reinforce this role. Necessarily, this means arrangements which facilitate collaborative working, not just at a Council wide level, but also at a truly local level - which under Panel's likely proposals on structure, imply a strong emphasis on sub-Council governance arrangements.

This means considering not just government in the formal structural sense, but governance as the means by which communities take and implement decisions to achieve their desired futures. It implies bringing to the table not just the formal structures of local government, but other stakeholders ranging from government agencies, to the third sector, the private sector and other community enablers. The Panel is clearly looking for options which will support a governance approach which incorporates the distinctive voices of individual communities, and not just a 'whole of Council' view. It is an opportunity for Snowy River to put forward its views on how best to facilitate a continuing and strong community voice in governance if the Snowy River is merged with another council or councils. The next section outlines some possible options.

Options for sub-council governance

This section considers possible options for sub-council governance, drawing on experience in England, Australia and New Zealand.

The first question to consider is whether a form of sub-council governance should be part of the formal structure of councils. In Australia, this would mean creating a fourth tier of governance. This could attract opposition purely on the principle of creating too many formal tiers of governance - a point of view which we have heard expressed on a number of occasions. The alternative is to require or encourage councils to create sub-council governance as a matter of good practice. This could include the Department of Local Government (and/or the merged Association) developing a good practice guide and other material.

The second question is whether the establishment of sub-council governance should be required whenever part of a council area met certain criteria, or whether it should be optional and, if so, at whose option - the council or the community?

England

England since the 1890s has had a network of parish councils, initially to handle civic duties in rural towns and villages but now available as an option even in large urban areas and variously known as neighbourhood, town or parish councils. They typically serve a relatively small population, usually in the hundreds, or low thousands.

They are able to raise their own funding through a precept on the Council tax. Their powers are defined in legislation and limited primarily to local facilities, and providing a local input on planning and related initiatives.

Establishment of new councils is in the discretion of the principal council (a district or unitary council, or a London Borough) and will normally take place following a governance review. The legislation empowers communities to petition the principal council to undertake a governance review. The process is complex and normally takes at least 12 months.

The strength of neighbourhood or parish councils is that they do provide a local voice, and an opportunity to influence decisions on a wide range of local facilities. Their weakness, which is typical of any form of sub-council governance, is that their decision-making powers will often be constrained by frameworks set by others - such as planning rules.

Australia

Australian councils have taken a variety of different approaches to enabling sub-council governance (an overview of evolving practice can be found in the Australian Centre of Excellence for Local Government publication*, Evolution in Community Governance: Building on What Works* available at: http://www.acelg.org.au/upload/program1/1334208484_Vol1_Community_Governance.pdf).

Victorian councils, in an initiative encouraged by the State government, were very actively engaged in facilitating community planning in the late 1990s and early 2000s. Typically, this involved councils facilitating the development of community plans, working with informal community networks, usually supported by council funded facilitators (sometimes on the council staff, sometimes independent). Golden Plains Shire is often pointed to as the exemplar of this practice. Today some 22 of its 35 geographically separate communities have established community planning groups whose priorities provide important input for council planning, including important initiatives in the provision of health services and public transport.

Yarra Ranges supports a network of what it terms township groups; community-based organisations typically incorporated, and formed to pursue an issue of importance to the community (it might be graffiti removal, it could be an annual festival). Before the Council will recognise them, groups are required to meet a set of criteria including stability, and community support. The council facilitates networking amongst groups, and supports them with training and advice on accessing funding.

Currently the Council is looking to integrate township groups within its place based approach to management.

A number of councils make use of Council committees, made up primarily of non-council people, and appointed in consultation with community stakeholders - Surf Coast Shire has taken this approach in the establishment of a local group to advise it on infrastructure development.

A further option regarded by at least some observers as a form of community governance is the ward-based system which operates within the Brisbane City Council. There are 26 councillors elected from wards across the city. Each has a ward office with its own staff. Their role is to work closely with the community and represent community views to the parent Council. This is complemented by intensive investment in communication, with the Council being a leader in the use of electronic media to work with its citizens.

New Zealand

New Zealand has two different formal arrangements for sub-council governance. The 1989 reforms of local government included provision for the establishment of community boards. Initially these were put in place in districts which were losing their own independent local authority (typically small boroughs being merged with others), but there is provision for the creation of new community boards as part of a representation review or local government reorganisation. This has seldom been used.

The Local Government Act sets out the role of community boards as:

The role of a community board is to—
(a) represent, and act as an advocate for, the interests of its community; and
(b) consider and report on all matters referred to it by the territorial authority, or any matter of interest or concern to the community board; and
(c) maintain an overview of services provided by the territorial authority within the community; and
(d) prepare an annual submission to the territorial authority for expenditure within the community; and
(e) communicate with community organisations and special interest groups within the community; and
(f) undertake any other responsibilities that are delegated to it by the territorial authority.

Very few of New Zealand's community boards have been delegated any other responsibilities. The majority operate simply under the so-called 'statutory' delegations set out in paragraphs (a)-(e) above. The parent council of one, the Wanaka Community Board, has granted it a full set of delegations (certain matters cannot be delegated such as the striking of a rate) which are exercised within the framework of a governance agreement negotiated between the board and the parent council (Queenstown Lakes District Council). There is an understanding between the board and the Council that, in respect of matters not delegated to the board such as striking a rate, the Council will be guided by the community board's views.

Another Council, the Southland District Council, which was constituted from a number of smaller boroughs and one county, has some seven community boards. As

well as these, it has constituted community committees in another nine small townships (all part of the former County), and granted the boards and community committees substantial delegations over local works, facilities, etc.

The New Zealand experience is that community boards tend to function generally as paid advocates for their communities and often are perceived by the parent Council as something of a thorn in its side. This experience suggests that, unless boards are given real responsibility, they can be problematic.

The second option which New Zealand has adopted is the local boards which were created in the legislation which established the Auckland Council (the most recent amendment to the New Zealand local government act now provides that local boards can be created elsewhere).

They were put in place to constitute the 'local democratic' component of the Auckland Council structure - which serves a population of 1.4 million people. They have no separate legal existence (local boards are an unincorporated component of the Auckland Council), and no power to employ staff, hold assets, raise revenue or borrow. Under the legislation each local board is responsible and democratically accountable for the decision making of the Auckland Council in relation to the non-regulatory activities of the Auckland Council that are allocated to the local board. Decision-making is allocated to the local board by delegation from the Auckland Council. Generally matters which are seen as having implications beyond the boundaries of a local board will not be delegated. Determining whether a matter is purely local or not has proved extraordinarily complex, in large part because virtually anything which the Auckland Council does can be seen as either local or regional or both, depending on the lens through which it is examined.

The average population of a local board area is 70,000, which means that local boards carry a significant workload in terms of understanding and responding to local preferences, expressing these to the governing body and exercising their delegated decision-making role. The advisory staff who work with local boards are employed by the Chief Executive of the Auckland Council and accountable to him for their performance, an arrangement which carries within it the potential for significant conflict in any case in which a local board's decisions may be at variance with the policy of the Council itself.

Assessment

Each of the formal structures discussed illustrate one of the dilemmas of constituting effective community governance - especially in a context such as that which now exists in New South Wales of seeing community governance as an important tool in facilitating collaboration across a number of different agencies and entities. This is the fact that the statutory definition of a role is normally time bound (reflecting current rather than future perceptions of need), and sets boundaries which may constitute barriers to developing 'fit for purpose' arrangements to meet the needs of individual communities.

It is usual, when specifying a form of governance in statute, to set out how it is constituted, including how people become members of its governing body. The way community governance practice is evolving highlights the desirability of being flexible, especially in dealing with issues of membership - a formal set of rules may suit one community, but not meet needs in another. As an example, if Snowy River

opted for a structure which required electing members, it might find that became an obstacle for bringing in representatives of specific players in community governance, for example, a community bank if one were established.

A further issue, which applies to any form of community governance, is who exercises discretion over decisions such as whether or not to establish something, what powers to give it, and how it should be funded. Leaving these discretions to a parent Council may result in frustrating a community desire to establish its own local governance. Enabling communities to trigger the establishment of a local governance arrangement may result in entities which lack the necessary resource base or capability.

On balance, the emerging Australian practice of the use of informal structures - that is structures which are not themselves specified in local government legislation - may offer the best option. It should though be accompanied by statutory provisions setting out the conditions under which a parent Council would facilitate the establishment of a local community governance arrangement, and provide appropriate best practice guidance and professional development support, including guidance on how to constitute governing arrangements, whether by election, selection, or a combination.

7   Conclusion

The purpose of this paper has been to assist the Council, both elected members and staff, prepare for responding to the forthcoming draft report of the Independent Panel. It has done this both by providing an understanding of the context in which the present reform processes taking place, and highlighting the likely direction of Panel recommendations, and options which the Council could develop in response.

It is clear that significant change is underway, including a rethinking of the relationship between local government and state government, and local government and its communities. There is a useful parallel with the Queensland local government reform process of 2007 - an initially collaborative undertaking between the State government and local government, followed by imposed change when the State government concluded that local government was unlikely to deliver.

The emphasis on the 'local government system', and the potential role of councils in coordinating public-sector activity within their districts opens up real opportunity for an enhanced leadership role, but one which requires a very careful focus on developing 'fit for purpose' structures.

Finally, there appears to be a very real opportunity for rethinking the role of local government as a mix of community cooperative and social enterprise using its skills and resources to enable development of community based activity across the board (and noting that a social enterprise approach is based on careful use of resources).