



**South Eastern Regional
Organisation of Councils
(SEROC)
Reform Options Report**

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About the report

Genesis

This project began with a brief to prepare an Options Paper for consideration by the SEROC Board outlining how the SEROC Councils¹ can achieve sustainable efficiencies and savings, increase strategic capacity and maintain effective local democracy.

The McKinlay Douglas Ltd (MDL) proposal in response to the brief was to prepare a report which:

- Reflects current understandings of the role, function and significance of local government.
- Addresses the need to improve effectiveness and efficiency, including in key areas such as the development, maintenance and funding of infrastructure.
- Demonstrates how the use of innovative structures (for example in areas such as shared services and building strategic capability) can strengthen local government collectively whilst also reinforcing local democracy.
- Acknowledges the important role of local government in addressing challenges such as an ageing population, climate change and the impact of globalisation.
- Discusses leading practice in enhancing community governance.
- Reflects on how SEROC councils could deal with the potential for voluntary amalgamations and boundary alterations where such changes are appropriate and consistent with local democracy.

Following a first meeting at Queanbeyan with SEROC CEOs, the focus of the report shifted to preparing:

- A submission from SEROC to the Independent Local Government Review Panel.
- A plan for councils to work to for progress – game plan, timeframe, KPIs.

The Queanbeyan meeting was followed by a further workshop with the SEROC board at Young in which the proposed approach for the final report was canvassed with the board. This report largely follows the approach set out in the material presented to the meeting at Young.

Report structure

Part I: Briefing for the SEROC Board

Part II: Draft Submission to the Independent Panel

Part III: Proposed work program for SEROC.

¹ South Eastern Regional Organisation of Councils (a group of some 12 New South Wales local authorities surrounding the Australian Capital Territory).

Part I Briefing for the SEROC Board

This part of the report covers:

- Local government reform: the background.
- An overview of major trends influencing local government leading up to the current focus on local government reform.
- Issues in the current structure and governance of New South Wales local government.

It concludes with a brief discussion of specific issues arising from the relationship between SEROC's New South Wales councils and the Australian Capital Territory.

Local government reform: the background

Local government across Australia has undergone a number of reforms over the past century, resulting in a reduction in the total number of councils from 1067 in 1910 to 559 in 2008, as shown in the following table:

Table 2.1: Number of Local Councils in Australia 1910-2008

	1910	1967	1982	1990	2000	2008
NSW	324	224	175	176	174	152
VIC	206	210	211	210	78	79 μ
QLD*	164	131	134	134	157	73
SA	175	142	127	122	68	68
WA	147	144	138	138	142	142#
TAS	51	49	49	46	29	29
NT^	0	1	6	22	69	16
TOTAL	1,067	901	840	848	717	559

The underlying drivers for reform have varied. The major restructuring which took place in Victoria in the early 1990s very much reflected a new public management approach to public sector management with a strong emphasis on efficiency and a belief that, in local government, at least, this required a major programme of amalgamation.

South Australia

In South Australia in the late 1990s, reform was more in the nature of a collaborative undertaking between the State government and the local government sector (although with an implicit understanding that, if the voluntary approach to reorganisation was unsuccessful, a compulsory approach might be put in its place). Again, a major driver was the belief that fewer and larger councils would lead to very significant savings (a belief which was strongly promoted at the time, but which has not been substantiated by the outcomes, with the evidence suggesting that any potential savings had been diverted into

additional services or infrastructure upgrade, rather than in any reduction in the overall cost of local government).

Queensland

The Queensland restructuring was different again. It began with a collaborative undertaking between the State government and the local government sector - the 'Size, Shape and Sustainability' review. When the State government became disillusioned by the lack of progress, it unilaterally imposed a process of forced amalgamation. The emphasis was not on seeking cost reduction, but rather on creating a capable local government sector able to recruit and retain the highly skilled staff required to manage in an increasingly complex environment. Behind this was a recognition that the Queensland economy was operating in an increasingly open and competitive environment, and that lifting the capability of local government was an important element in responding to this.

New South Wales

The New South Wales approach to considering the future role, function and structure of local government appears to be drawing on the best of recent practice in local government reform. Specifically, the State government has adopted a collaborative approach, working in partnership with the sector but at the same time, with the agreement of the sector, putting in place mechanisms such as the Independent Panel to ensure that the reform process maintains momentum.

As with the Queensland reforms, the emphasis is more on building a capable local government sector, with the expectation that this can be achieved in partnership, than on pursuing savings through amalgamation.

The approach to reform can be seen in the strategic directions for New South Wales local government agreed as part of the Destination 2036 action plan:



It is also reflected in the terms of reference for the Independent Panel which require it to investigate and identify options for governance models, structural arrangements and boundary changes for local government in NSW, taking into consideration:

- ability to support the current and future needs of local communities

- ability to deliver services and infrastructure efficiently effectively and in a timely manner
- the financial sustainability of each local government area
- ability for local representation and decision making; and
- barriers and incentives to encourage voluntary boundary changes.

Our assessment, looking at both the documentation leading up to the current review process and the membership of the Independent Panel, is that the New South Wales reform process will be a much more deliberative one than has normally been the case with local government reform in Australia. Specifically we expect the Independent Panel to be very aware of the different situations of different councils and the circumstances they face and to take this properly into account. We also expect the Independent Panel to place considerable emphasis on the first element of its terms of reference: the "ability to support the current and future needs of local communities". We expect this to be interpreted as ensuring that whatever governance and related arrangements are recommended, they will be intended to facilitate addressing 'local' as much as possible from a local perspective.

That said, we also expect the Independent Panel to be very aware of the major international and national trends impacting on local government, and focus on ensuring that the outcome of its work is a set of recommendations to support a strong and capable local government sector able to play its full part in enabling the New South Wales' society and economy to cope with change.

Finally, we expect that the Independent Panel, rather than taking an ideological perspective (for example, a commitment to new public management to the exclusion of other perspectives on local government), will adopt a very nuanced approach, recognising that the drivers for reform are primarily changes outside the control of local government and in many respects outside State and Federal governments. Accordingly, we are assuming that the Independent Panel will focus on those changes it regards as essential in order to enable local government to discharge its role effectively, and at least cost to residents and ratepayers, and to others impacted by its activity, whilst balancing the demands of efficient service delivery on the one hand and promoting local democracy and engagement on the other.

An overview of major trends influencing local government

Six major trends are considered:

- Globalisation
- The rise of metropolitan centres
- Demography
- Fiscal issues including the global financial crisis, and financial sustainability

- Governance
- Community engagement.

Globalisation

Globalisation has been having a profound impact on the economies and societies of much of the developed world.

It's been a challenge for central governments in terms of managing national economies, but increasingly it is also seen as a challenge for councils, putting quite different demands on local government than previously experienced in its history.

Local government has developed and grown on the assumption that each individual local authority is generally best placed to decide how best to deliver services, how to undertake its regulatory role (within statutory parameters) and what standards it should adopt for works which it undertakes or contracts out. Little or no consideration has been given to the way in which decisions about how it goes about these functions impact on users, or on the wider community including businesses, affected, directly or indirectly, by local authority activity. The principal exception has been the general assertion, when local government restructuring has been under consideration, that bigger is frequently better, and local authorities should be structured in order to capture economies of scale. That assertion itself has not been widely accepted. Recent research suggests that the evidence to support the case for economies of scale is variable (Aulich et al 2011), with arguments now focusing much more on capability and economies of scope (the savings that result from undertaking several different activities using a common resource, as compared with undertaking each activity individually).

The reason is that what globalisation has done and is continuing to do is place the tradable sector of the economy – those businesses either exporting goods and services, or producing goods and services which compete with imports – under increasing pressure. To succeed, what they produce must be competitive both in terms of quality and cost. One important element in this is the cost of the goods and services they themselves use. This is not just the direct cost in terms of what they pay, it is the indirect costs resulting from the way other services are delivered.

That concern is reinforcing the focus on how local government carries out individual activities, and the potential for reducing cost/increasing effectiveness and quality of performance, so as to minimise the impact of direct and indirect cost, especially on the tradable sector. Local government is an important contributor to that sector's cost structure, not just in respect of rates, fees and charges, but in terms of how local government exercises its regulatory and other functions. Two recent reports have highlighted this:

- The final report of the Productivity Commission on the impact of local government's regulatory role has emphasised the importance of consistency – that local government's regulatory requirements should be consistent across councils unless there is good reason otherwise, proposing as a leading practice that:

There is a case for state, territory and local governments to assess the mechanisms available to harmonise or coordinate local regulatory activities where the costs of variations in local regulation exceed the benefits (Leading Practice 3.17, p129, Vol 1, Final Report).

- The Ernst & Young report 'Strong Foundations for Sustainable Local Infrastructure' prepared for the Department of Regional Australia, Local Government, Arts and Sport, argues the case for greater collaboration amongst councils. This includes the establishment of structures that would allow the joint ownership and management of infrastructure assets as a means of achieving needed efficiencies and economies of scale, as well as the ability to structure financing arrangements not readily available to individual councils. While acknowledging the effective role regional organisations of councils can play in planning and advocacy, it argues that much more is needed, and refers to how the Destination 2036 initiative portrays the New South Wales government's view on the role of RoCs:

The New South Wales Government is actively promoting ROCs as key partners in local infrastructure delivery, for example through the Destinations 2036 initiative. However, it too has also recognised similar limitations, finding that to be truly effective, ROCs would require legislative recognition, boundary alignment, and the ability to develop models for regional services delivery².

Both of these reports are written in the context of the current competitive environment of the Australian economy. As local government thinks about their implications, it is important to remember that the basic structure of local government and much its organisational arrangements, including the respective roles of elected members and senior management, were effectively put in place before the impact of globalisation was properly understood.

Quite apart from the general community interest in 'value for money', the pressures of international competition on Australia's tradable sector mean that local authorities need to find new ways of doing what they do, to minimise the cost impact (both direct and indirect) on users especially those in the tradable sector. This includes new ways of collaborating and coordinating their activities with each other so that where possible regulatory and other practices are standardised.

Local government should expect an ongoing focus from business and others, and from higher tiers of government, on the steps local government is taking to be innovative in minimising the cost of what it does, including being prepared to ensure consistency across different councils where appropriate, and developing new means of owning, managing and procuring services and the associated resources (whether back-office or customer facing). Expect also a growing focus on how councils understand the opportunity cost of time – for example, that delays in processing applications can result in substantial cost to applicants simply because of the cost of holding the affected assets until a decision is made.

² Strong foundations for Sustainable Infrastructure, p74, accessed at <http://www.regional.gov.au/local/lqifr/files/20120622-strong-foundations.pdf>

The rise of Metropolitan Centres

This is one of the most profound changes affecting local government worldwide. In 2007 the percentage of the world's population living in urban centres passed 50% for the first time. It is expected to increase to approximately 70% by 2050.³

Think back 10 or 15 years, and most of us believed that the emergence of the Internet meant that location would become less significant, especially for knowledge workers – anyone would be able to connect by e-mail, by video conference and increasingly by various social media.

The exact opposite has happened. It is now becoming clear that face-to-face contact is more, not less important and that concentration in cities will increase. The reality can be seen in the growing dominance of large cities within their own local economies.

The principal driver behind this has been the changing nature of the international economy. Growth is now substantially driven by some tens of thousands of multinational enterprises engaged in high skill-based activity. A recent review of research in the discipline of economic geography spells out what this means in practice:

- Modern transportation and communications technologies and the ability to exploit knowledge assets globally mean that the performance of a country increasingly depends on its city-regions, whose performance in turn increasingly depends on the connectivity, global engagement and competitive performance of its multinational firms.
- Obviously, cities that are too small to provide the scale of international transportation infrastructure necessary to be part of these global networks will be unable to sustain global companies in the long term. Yet, infrastructure alone is not the answer, as there does appear to be a minimum threshold of approximately 1.5–2 million people in order for a city-region to achieve sufficient knowledge-related agglomeration effects to sustain the local multinationals⁴.

What this means for New South Wales in terms of population distribution/growth is set out in a recent Department of Planning report on population projections⁵ as:

³ United Nations: World Urbanisation Prospects. The 2011 revision
http://esa.un.org/unup/pdf/WUP2011_Highlights.pdf

⁴ McCann, P. & Acs, Z. (2011): *Globalization: Countries, Cities and Multinationals*, Regional Studies, 45:1, pp17-32

⁵ New South Wales State and Regional Population Projections, 2006-2036
2008 release, p10.

Key results

- Sydney is expected to increase its dominance of the State's population as it grows from 4.3 million in 2006 to 6.0 million in 2036. It will experience three-quarters of the State's projected population growth and increase its share of the State's population from 62.8% in 2006 to 66.0% in 2036.
- Nearly all of the remaining quarter of the State's projected population growth between 2006 and 2036 will occur in the other coastal regions, in large part due to net migration gains.
- Population decline is expected to occur in the Northern and North West regions due to net out-migration and declining natural increase.
- The other inland regions (Central West, Murrumbidgee and Murray) are expected to experience modest population increases.
- Inland regions are projected to experience population declines at ages under 60 between 2006 and 2036.
- Population ageing will continue, with all regions projected to experience large percentage increases in age groups 65-84 and 85 and over.

Competition between metropolitan centres is very much based on connectivity, as well as quality of place. Among other things, this means quality infrastructure – especially transport and the ease of movement within the metropolitan centre, as well as its connectivity to other centres.

Implications for Australian local government include the need to address under investment in infrastructure in Australia's major metropolitan centres. This is one reason the Federal government established the Major Cities Unit: although local government is formally the responsibility of the states, the Federal government as the level of government with primary responsibility for economic management cannot ignore the critical importance of ensuring the competitiveness of Australia's metropolitan centres – something which has obvious implications for how both Federal and State governments allocate available funding for infrastructure investment, and something that has been picked up in the recently released NSW and State Infrastructure Strategy 2012-2032.

Demography

Unsurprisingly, globalisation and the rise of metropolitan centres are having major impacts on the distribution of population growth across Australia. However, these are not the only factors.

Perhaps the single most important driver of what is happening with population, especially in developed countries, is that the world is coming to the end of three centuries of population increase driven by improvements in infant mortality. As infant death rates declined, more children survived, resulting in significant natural increase which is now ending as fertility rates finally adjust to the changing reality. One result is that over time the world's population will actually stabilise and, by the end of the century, begin to decline.

Even in the short term, the impacts are now profound. The age composition of the Australian population is changing dramatically and differentially.

Tracking these changes and projecting their future direction, especially for smaller rural and regional councils, is currently somewhat problematic because of difficulties with the data. In 2008 the New South Wales Department of Planning and Infrastructure released population projections, local government area by local

government area, for the period from 2006 to 2036 by 5 yearly steps. The accuracy of the projections was challenged by a number of smaller councils pointing to the fact that 2011 census figures were, and a number of cases, substantially different from what had been projected by the Department.

This was acknowledged in an exchange in the house on 21 June 2012 in which the responsible minister, the Hon Brad Hazzard, in response to a question from the member for Northern Tablelands, acknowledged:

there was a disparity between the Australian Bureau of Statistics and census forecasts—which indicated an increase in the numbers that were likely in the regional areas, particularly the area of the member for Northern Tablelands—and the figures of the Department of Planning, which indicated a decline. That showed quite clearly, and I said to the House at the time, that the Department of Planning had to do a lot more work to determine what would be the accurate forecast.

The Australian Bureau of Statistics has confirmed (see footnote⁶) that a major improvement for the 2011 census has provided a better measure of undercount. This should mean that future population projections more correctly reflect the reality, especially in smaller councils.

Despite the difficulties with current projections, the available data is useful as showing distinctly different groupings in terms of population drivers which reflect the location of different councils, and the differential impact on them of the major influences affecting local government. Broadly, the councils can be grouped as follows:

- *Peri-urban councils* whose growth is driven by their location in relation to Canberra. These are Palerang, Queanbeyan and Yass Valley. Goulburn Mulwaree may also come into this group although current population projections suggest the Canberra impact on growth is not yet significant. Much of the population growth is coming from people who are economically active and will support a strong rating base.
- *Snowy River* as a major tourism and administration centre within the Snowy Mountains. Again, growth has a strong component of people who are still economically active.
- *Eurobodalla* as a 'sea change' council with growth driven by people retiring to the coast. This council can expect to face ongoing demand for investment in infrastructure, but with a more limited rating base because of the typically lower incomes of retired households (and may also face issues in terms of the affordability of the pensioner rate rebate).

⁶ "In June and July 2012 the ABS released Estimated Resident Population (ERP) data, at the national, state/territory and sub-state levels, which had been 'rebased' to take into account the results of the 2011 Census (the new 'base'). This resulted in new preliminary rebased ERP data between September 2006 and June 2011 (inclusive), which is our usual practice after every Census.

"The difference between these 'preliminary rebased' estimates and what was previously published is referred to as 'intercensal error'. The 2011 intercensal error figure is the highest on record. The main reason for this high number was a major improvement to the method of estimating how complete the Census counts were. This new method provided a better measure of undercount, which was noticeably lower than in the previous census."

- An emerging regional centre, *Young Shire*, which although rural appears to be benefiting from a significant service centre role.
- The *remaining councils* which are both rural and potentially facing static or declining populations, and within these, significant ageing, although there are signs that some councils in this group are experiencing greater than expected growth, partly because they also are impacted by the ongoing growth of Canberra. These are the councils likeliest to face significant challenges in terms of maintaining infrastructure and providing services.

Adapting to demographic change characterised by static or declining populations is particularly challenging as we have been very much accustomed to a world in which growth is virtually taken for granted. The natural response to any suggestion of falling growth or declining population is to see economic development as the solution and look to put in place strategies intended to attract new activity and return the local economy to growth.

Worldwide, many localities are now beginning to adjust to an understanding that decline is not always reversible, given the drivers that underlie it. As a consequence, something of a shift is taking place from looking to economic development as the response, to considering how to manage decline in a way that will provide the best outcomes for the community. This is an approach gaining force both in North America and Europe.

More generally, an ageing population will impact on all of the SEROC councils to a lesser or greater degree. This will range from practical issues such as the design and layout of streets, footpaths etc, and traffic management through to what role the council should play in ensuring that older people have access to the services required to maintain a reasonable quality of life.

There is one specific issue which may impact significantly on councils with a high degree of pastoral, horticultural and/or forestry activity. This is the ongoing impact of increasing productivity. For many years, the primary sector generally has been substituting machinery for labour, significantly increasing productivity and reducing the number of people as workers, whether on farm or in further processing. One consequence has been an ongoing decline in rural services (education, arts and culture, retail etc) as the number of users declines, thus rendering a number of formerly viable services non-viable.

A related effect of the improvement in productivity has been an increase in the skill level required, especially at the farm management level. The need now is more and more for people who are tertiary qualified and with a high degree of computer literacy. They tend to be more demanding in terms of quality of life and availability of services, to have partners who themselves are well-educated and typically with their own career ambitions, and want their children to have access to a wide range of services.

The cumulative impact of these changes may well be an ongoing and serious recruitment and retention issue for rural employers unless they are able to develop strategies to ensure that service levels, not just government and local government, but more widely, continue to meet the demands of their prospective employees. In practice this is likely to require a considered strategic approach,

developed in partnership between councils and their communities and potentially involving quite significant investment which conceptually should be treated as an ongoing part of the cost of employment.

It is also a matter which should be considered by the Independent Panel, as it will be an issue across the whole of rural New South Wales, and is perhaps an issue in respect of which the Panel ought to make explicit recommendations.

Fiscal issues

Fiscal issues – the ability of governments at whatever level to maintain existing services, and meet new demands, whilst restricting expenditure to levels which are both affordable and strike a reasonable balance between today's populations and tomorrow's – are among the most challenging we now face.

Local government

First, consider local government itself. Numerous reports at both state and national level have raised very real concerns about the ongoing financial sustainability of local government. In New South Wales the various reports associated with Professor Percy Allan have highlighted this problem, especially in terms of underinvestment over many years in infrastructure maintenance and renewal – a problem closely associated with the rate capping regime. (The Independent Panel estimates that if the per capita rate take in New South Wales was that the average of other Australian States, local government would have an additional \$800 million a year in revenue.)

Today the common view is that, even if rate capping were abolished, it would be extremely difficult for local authorities to make up the funding shortfall solely from rates or other means of extracting revenue from the communities they serve. The following statement from Eurobodalla's current long-term financial plan expresses the situation well:

It is widely understood across all Councils in NSW that the real cost of maintaining assets and infrastructure is not able to be met by existing rating income. Eurobodalla's situation is not unique. Council is investing significant efforts in using technology and sophisticated analysis to find better more efficient and cost effective means to manage and maintain its assets and infrastructure.

The ability of councils to address issues of financial sustainability and the maintenance of infrastructure will depend on a number of factors, including the extent to which the rate capping regime remains in place (and IPART's management of exemptions facilitates the necessary revenue increases), the extent to which councils are able to innovate in the management and funding of infrastructure in ways which reduce cost, and the robustness of individual council rating bases.

It will also depend on the extent to which councils, especially smaller councils, are able to support their core activities by undertaking work for other tiers of government. A common example, and one which clearly has significant financial benefits for well performing councils, is roading maintenance under RMS contracts. These enable councils to make better use of plant, machinery and staff

resources which they would in any event need to have in place for their own activity.

At the moment RMS contracting practices are under review, with an implication that this work may be tendered out in much larger parcels with the objective of securing lower unit costs, quite likely through arrangements with major private sector providers. We argue that such an approach is inherently short-sighted as it confuses cost/benefit from an RMS perspective with cost/benefit from either a 'whole of public sector' or 'whole of society' perspective. There will clearly be additional costs if RMS shifts to the use of large-scale private contracts. Many of those costs will be borne by other arms of State government or by the wider community. At the very least, any reappraisal of RMS arrangements should be based on a 'whole of society' cost/benefit analysis.

The current RMS arrangements can be seen as a subset of what should be a more general practice: State government contracting with local government for the delivery of services where there are potential benefits from doing so, either in a narrow cost/benefit sense or in a broader 'whole of society' sense. At the very least, it is worth exploring the potential of councils contracting to manage access to services where State government agencies need to have a distributed client interface. The gains from the potential economies of scope associated with such an approach could make a significant contribution to the ongoing viability of especially smaller rural and regional councils. It is an approach that could also have other benefits as it would make it much more feasible for State government agencies to have representation in areas where it would simply be uneconomic to establish a stand-alone office.

Two other factors will be significant as councils and other tiers of government adjust to the changed fiscal environment. The first is the review of the Financial Assistance Grants regime to be conducted by the Commonwealth Grants Commission and completed by December 2013. The terms of reference imply a potential for quite significant change in the way grants are distributed, with the objective of the review stated as:

To identify tangible measures for improving the impact of the Local Government (Financial Assistance) Grants (FAGs) on the effectiveness of local governments and their ability to provide services to their residents within the current funding envelope.

The combination of "tangible measures" and staying "within the current funding envelope" suggest the possibility of quite substantial reallocation. The Australian Local Government Association has argued that the fundamental problem is inadequate funding, but considering an increase in funding over and above the current inflation adjustment is specifically outside the terms of reference. As a consequence, it is likely one focus for recommendations will be on whether the per capita element of the grants should remain, recognising that paying the per capita grant to councils which have a strong rating base is really at odds with the overarching objective of FAGs – achieving equity amongst councils in the funding of services.

The second factor is the extent to which individual states and their local government sectors are prepared to accept arguments that, in addition to Financial Assistance Grants funded by the Federal government, State

government-funded equalisation payments may have a role to play. These are payments intended to equalise the ability of councils to fund an agreed set of core services to a common standard. In New South Wales (and other Australian States) equalisation payments would almost certainly look very much like payments from city-based ratepayers for the provision of 'rural services' - that is the maintenance of countryside as part of the Australian sense of identity. Here the issue is the extent to which a proportion of New South Wales councils are simply unable to raise sufficient revenue through a combination of grants, and own revenue, and will need a supplementary form of funding if they are to remain viable. One difficulty with a state funded equalisation program would be that a principal objective of the Federal Financial Assistance Grants program is improving the capacity of local government to provide their residents with an equitable level of services so that, in theory, no other form of equalisation payment should be necessary.

Both within Australia and internationally, experience is showing the potential for councils to generate, or facilitate the generation of, additional income streams for the benefit of the community.

In Australia, the best-known example is the growth of the community banking sector, with many communities now generating a substantial additional source of discretionary funding. Local government has often been a facilitator in the establishment of community bank branches and frequently works closely with them in determining the best use of surpluses within the community.

In England, one of the consequences of being very significant reduction in local government revenue has been to encourage the number of councils to look at ways of promoting a social enterprise approach to the delivery of activity, encouraging the development of employee and/or community cooperatives and similar vehicles. These are seen as especially relevant in areas of service delivery of special importance to the community (libraries and leisure centres are examples), and in the delivery of social services, an important function of English local government. It is likely that extent this approach attracts attention in Australia it will be primarily in community-based service delivery activities such as libraries and centres. Our current thinking, considering the UK experience, is that this approach is likely to have relatively limited impact in part because of the special challenges involved in establishing employee or community owned businesses.

Of more interest is the development of what are known as community foundations - charitable trusts established to manage gifts and bequests to the community, either generally or for specific purposes, where the intention is that the capital sum involved should be invested, and the income applied from time to time for community purposes. They are based on the reasonable assumption that in most communities there will be a proportion of people who would like to give something back to the community over the long term (often out of their estate) if only they can find a reliable way of doing so.

Community foundations provide a solution to a very difficult problem; the absence of any effective means for managing community bequests over the medium to long term. Very few people will gift or bequeath substantial capital to a local authority. The alternatives of using either personal advisers (lawyers;

accountants) or trustee companies, both raise problems of continuity and capability, especially in terms of making good judgements about priorities.

The community foundation approach provides an attractive option to resolve these difficulties. Trust deeds provide for the appointment of a board on the basis of skills, experience and standing in the community, thus giving people confidence that the foundation will be managed long-term by people who know and understand the community and will have the required skills (and, typically, also will provide a far less expensive option in terms of administration costs). It will also normally ensure prudent management of capital sums, and ensure that people can either gift or bequeath money for general community purposes (in which case the trustees take responsibility for determining recipients, or for specific purposes).

This is a newly emerging option, but one which offers great promise for creating an additional source of discretionary funding for community purposes. It represents a good example of an opportunity for councils as leaders of the community to develop innovative ways of finding additional resources for meeting community needs.

Fiscal issues for higher tiers of government

The global financial crisis has been a major wake-up call for all tiers of government in virtually all countries. It has led to significant deleveraging as public, private and household sectors recognise the unsustainability of the debt-fuelled practices of the early part of this century. It has also attracted attention to the extent to which current consumers have sought to send the bill for the goods and services they consume (both market goods and services and government goods and services) on to the next generation, and the unsustainability of this approach. The result in the public sector has been a re-emphasis on the importance of keeping expenditure within affordable limits, and using debt solely or primarily to fund assets that deliver services over future years, so that the flow of services is matched to the commitment to repay the debt.

Although Australia is fortunate in that the Federal government has a relatively low debt to GDP ratio as compared with most other developed countries, higher tiers of government still face very significant fiscal pressures. First, and most obviously, the states all face a revenue deficit in the sense of a gap between 'own revenue' and expenditure.

Next, the Federal government also faces significant funding pressures. It is currently on a path of deficit reduction but in the longer term will face major additional cost pressures, both as a result of an ageing population and because it will be a necessary partner in addressing the backlog of infrastructure investment in Australia's major cities.

Local government will naturally be looking to both Federal and State government for additional financial support, but will be competing against other and significant pressures including how to manage the burgeoning cost of major social services.

In this context, an increasingly important role for local government is likely to be using its unique capabilities, and community networks and knowledge, in

supporting the more effective design, targeting and delivery of major social services.

There is growing research-based evidence that the so-called "wicked issues" bedevilling modern societies – educational underachievement, family dysfunction (including child abuse), substance abuse as examples – cannot be solved by relying solely on the traditional top-down interventions and strategies of central governments (federal or state). Instead, it is now recognised that issues of this kind need a partnership approach able to tap into local knowledge, networks and support – resources local government is uniquely placed to provide.

For central government, there are some very practical benefits. It is reasonably clear that local governments generally know and understand their communities better than central government agencies. They are well-placed to ensure that the design and delivery of policy is well informed and well targeted.

Research in England has demonstrated that drawing on the knowledge and networks of local government can significantly reduce the cost of major social services. The 'Manifesto for Londoners'⁷, prepared a couple of years ago, argued the case for a greater involvement of the London boroughs in the design, targeting and delivery of major social services and demonstrated that there would be significant cost reductions available to central government through such an approach. The main barrier, in an ironic parallel with the difficulty local government often has in adopting shared services, is the reluctance of individual government agencies to share control.

In England, evolving government policy has seen a gradual iteration from community well-being, community strategic plans and local strategic partnerships through Total Place, to Big Society, Open Public Services and now Whole Place, as successive governments have experimented with how best to engage communities.

A year ago, the UK government issued its Community Budgets Prospectus⁸ as part of a process of establishing a series of pilot projects to test the Whole Place approach.

The Minister of Local Government in his foreword to the prospectus had this to say in terms of the government's objectives:

....we want to go further and to test how local places can make best use of all the money that is spent in their area on public services on a wide range of problems. The pilots set out in the prospectus provide a real opportunity to overcome the long-standing barriers to real local design and leadership of services.

Ambitious Community Budgets, designed locally and not by Whitehall, will make a significant contribution to ensuring that our public services benefit us all, with the poorest in our most disadvantaged communities no longer at the back of the queue.

⁷ See:

<http://www.londoncouncils.gov.uk/policylobbying/londonmatters/publications/manifesto/default.htm>

⁸ Accessed at:

<http://www.communities.gov.uk/publications/localgovernment/communitybudgetsprospectus>

In his speech⁹ to the 2012 conference of the Local Government Association, the Minister was very bullish about anticipated savings:

Early research shows that a saving of as little as two per cent equates to over £1 billion. This could well be the model for the future.

In Australia, the Municipal Association of Victoria has been taking the lead in introducing a Canadian initiative, 'co-design', to assist in the process of collaboration between social service agencies and communities, with promising results in terms of demonstrating how knowledge held at a community level can add very real value to government service delivery.¹⁰

This is important not just in terms of existing services, but in responding to the new demands we can see emerging. The standout example is the impact of an ageing population, with a virtual certainty that the costs of providing what we regard as a minimum level of care and support will grow exponentially – and quite possibly beyond the ability of the taxpayer to fund. There is a clear and urgent case to take a 'whole of community' approach to developing an ageing in place strategy which draws on community resources and capability as well as on taxpayers' and ratepayers' funds.

Governance

The New South Wales Local Government Act 1993 establishes what is generally understood to be a separation between the roles of Council in setting policy and the general manager who is "generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council".

In this respect, the Act is typical of 1990s legislation in Australia and New Zealand with its emphasis on the separation of roles. The wording differs from jurisdiction to jurisdiction, but the understanding across jurisdictions such as Victoria, New South Wales, Queensland (other than Brisbane) and New Zealand was common that the roles were to be separate, and that it was for the general manager to run the business of the Council.

The underlying assumption was that councils should act as the equivalent of a Board of Directors. The actual practice is somewhat different. Specifically, as the council/general manager split has evolved, councils have acted as though they have significantly less authority than boards of directors. For example:

- It is generally accepted that councils have a single source of advice: the general manager. In contrast, a Board of Directors would have no hesitation in seeking independent advice on any matter where directors either have reservations about the quality of advice, or consider that the nature of the risk or the scale of the transaction is such that it is simply prudent to have independent advice (and in the way that the law on directors duties is evolving, there is an increasing probability that the failure to seek such advice would be seen as itself a breach of duty).
- Councils seldom see themselves as having the power to direct resources specifically in support of elected members.

⁹ Accessed at: <http://www.communities.gov.uk/speeches/newsroom/lgaconference2012>

¹⁰ Lenihan and Briggs 2011.

Another feature of the current legislation was the apparent assumption that all local government activity was effectively homogenous in terms of the optimal operating framework within which to undertake it. That perhaps reflects the fact that the Australian economy was still in the early stages of emerging from a relatively protected environment to the much more exposed and open economy of a globalising world.

The reality is that local government undertakes a very wide range of activities, some of which are inherently public good, or quasi-judicial in character; some of which are inherently private good type activities not much different from activities normally found in the private sector. What follows from this is the need to have 'fit for purpose' arrangements in place that match the requirements of the activity, rather than a single set of decision-making, accountability and related constraints through which all activity must pass regardless of its character. The obvious example is the restrictions councils face in undertaking activity that is inherently commercial in nature, but that must comply with legislative requirements designed for inherently public activity.

In practice, what this actually means from a community perspective is that a number of things local government does operate at a very real disadvantage as councils are unable to make best use of public assets.

It also means that elected members are limited in their ability to exercise effective strategic leadership because of the constraints on the ways different activities can be undertaken.

Finally, there has been an increasing emphasis on the development of very detailed strategic and operational plans, partly with the (commendable) motivation of enhancing accountability to communities, and partly as a means of shaping council behaviour. There is an argument that one of the costs associated with this practice is to divert elected members from the fundamentally strategic nature of their role, focused on what are the major issues for the community, to a time intensive engagement with the minutiae of council activity. This may be as much a matter of practice as it is of legislation. A Board of Directors in an equivalent situation would see its role as setting the overall direction, and then leaving it to management to prepare detailed plans and strategies for final board approval. At most a board might set up a subcommittee to be involved more closely with management, but generally the focus would be on avoiding tying up valuable board time in what becomes very much a compliance issue rather than one of strategic direction setting.

Concerns over the potential imbalance between the powers and influence of elected members, and those of management, have become quite widespread in recent years. Most notably, they have focused on the perceived importance of addressing the powers of the Mayor, with the objective of ensuring that mayoral powers more properly reflect the standing of the Mayor as the leader of the council and, normally, the recognised leader of the council's community as well.

France, Italy and Germany now all use the elected executive mayor model. It has gained a lot of attention in England in recent years, starting with the creation of the post of the Mayor of London, although more generally, the endeavours of successive governments to encourage the adoption of the elected executive mayor model have not been very successful. This failure has been attributed to a combination of the very strong party control of local government in England (a

shift to elected executive mayors is a direct challenge to the power of people who can expect to be the leader of the council), and the absence of any serious promotion of the option (in the most recent round of referenda in 10 different cities, nine were lost; one however was carried resoundingly – Bristol, the only city in which any serious promotion of the option was undertaken).

Queensland has recently legislated to provide for the Mayor to have a semi-executive role, plus civic and ceremonial duties:

- leading and managing meetings
- proposing the adoption of the budget
- liaising with the chief executive officer on behalf of the other councillors
- leading, managing, and providing strategic direction to, the chief executive officer
- ensuring provision of information to the Minister about the local government area.

New Zealand is currently considering legislation which would give mayors (all of whom are elected by popular vote) additional powers. The role of the mayor is to be defined as:

to provide leadership to—

- “(a) the other members of the territorial authority; and
- (b) the people in the district of the territorial authority.”

The role will also include leading the development of the territorial authority’s plans (including the long-term plan and the annual plan), policies and budgets for consideration by the members of the territorial authority.

To complement the role, it is proposed that the mayor have the following additional powers:

- “(a) to appoint the deputy mayor:
- (b) to establish committees of the territorial authority:
- (c) to appoint the chairperson of each committee established under paragraph (b) and, for that purpose, a mayor—
- (i) may make the appointment before the other members of the committee are determined; and
- (ii) may appoint himself or herself.”

Our expectation is that the Independent Panel will make recommendations for increased mayoral powers, focusing on the Mayor's role as the leader of the community. In this respect, we note that the chair of the panel has written significantly on the role of mayors¹¹ and that one panel member was a long serving chief executive of Brisbane City Council and so has in-depth experience of working with an elected executive mayor.

The second aspect of governance – the governance of local authority activity itself – raises questions about the design of 'fit for purpose' governance arrangements. This is particularly the case in reflecting on the limitations of

¹¹ See for example Australian Mayors: What Can and Should They Do? Available at www.aceg.org.au

Regional Organisations of Councils as arrangements for owning and managing local authority activity, and as poorly designed to be effective decision-making entities.

An alternative which is attracting increased attention is the use of council owned companies with purpose-designed governance arrangements to ensure an effective balance between the ability of directors to manage the business of the company, and appropriate accountability to, and influence by, elected members. We understand that the present State government has much more relaxed approach to the use of council owned companies, and is likely to amend the provisions of section 358 Local Government Act to facilitate greater use of council owned companies. We also expect this to be conditional upon having in place appropriate post-establishment governance arrangements, possibly based on the New Zealand approach which has been designed to strike an appropriate balance between elected members and the boards of council owned companies.

Community engagement

Historically, local government has functioned on the assumption that the principal means of engagement between residents and ratepayers on the one hand, and the Council on the other, has been through the electoral process – choosing the representatives who will then take decisions on the community's behalf. There is growing evidence that this understanding is breaking down. On the negative side it comes from the ongoing decline in voter turnout.

On the positive side it comes through from both research evidence and the experience of individual councils demonstrating that people now place much greater importance on the opportunity to take part in decisions which affect the places where they live, work and play. A recent example from within New South Wales comes from the general manager of Pittwater Council responding to the findings from a consumer 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.

In fact, these findings are consistent with much of emerging practice in Australia and elsewhere. It includes the growing emphasis on place management, and a variety of different approaches to engaging with communities on specific issues, with Australian practice emerging as a rich source of experience.¹²

¹² See the recent 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

Issues in the current structure and governance of New South Wales local government

In this section we consider two separate issues: the governance of local authorities themselves and the governance of local authority activity.

Governance of local authorities

The present New South Wales Local Government Act, like those in similar jurisdictions, is based on the proposition that there should be a clear separation of responsibility for policy and implementation. It has its origin in the idea that councils should be governed in much the same way as corporates in the private sector; the governing body does the big picture stuff and monitors performance, and executive management has responsibility for implementation.

Unfortunately, the result is a situation very different from what seems to have been intended. In the corporate sector, the Board of Directors continues to have legal responsibility for the management of the company. The practical separation between the strategic and policy role of the board, and the implementation role of management, is a matter of good practice, not legal requirement. Furthermore, the board has the discretion at any time to override that separation if it believes it to be in the interests of the company to do so. In addition, the board has the final control over the allocation of resources, including resources to support any independent research and monitoring the board itself wants to undertake.

In contrast, within local government, elected members have little direct access to resources and generally are required to rely on the advice of their general manager. Not only do they have a relatively limited mandate, but they operate in an environment in which their priorities are in practice very much determined by statutory requirements, including the very heavy workload associated with developing a 10 year community strategic plan, resourcing strategy, delivery program and operational plan. As we all know, this is a prospect which confronts newly elected councillors with a commitment to complete not just the documents themselves, but public consultation and the subsequent hearings, and make their final decisions, by 30 June.

It has to be acknowledged that the Integrated Planning and Reporting Framework does have some very real strengths, including the degree of flexibility it allows councils in consulting their communities.

At the same time, however, it is part of a framework which significantly disenfranchises elected members, creating the risk that they are run by process rather than vice versa. When coupled with the relatively weak role that elected members have in relation to executive management, the overall environment for local government is one which undermines rather than supports strong strategic leadership from elected members.

It is in contrast with what happens further afield, for example, with the English use of a Cabinet structure, incorporating executive members with decision-making power, and backbench councillors with an increasingly important role in scrutinising council activity; or with the practice in much of North America and continental Europe (and coming in New Zealand) of elected executive mayors.

The governance of local authority activity

With the benefit of hindsight, one of the ironies of the new public management-based restructuring of local government reflected in the 1993 Act was the apparent assumption that all local government activity was effectively homogeneous in terms of the optimal operating framework within which to undertake it. That perhaps reflects the fact that the Australian economy was still in the early stages of emerging from a relatively protected environment to the much more exposed and open economy of a globalising world.

The reality is that local government undertakes a very wide range of activities, some of which are inherently public good, or quasi-judicial in character; some of which are inherently private good type activities not much different from activities normally found in the private sector. In practice, what this actually means from a community perspective is that a number of things local government does operate at a very real disadvantage, and councils are unable to make best use of public assets.

It also means that elected members are limited in their ability to exercise effective strategic leadership because of the constraints on the way in which different activities can be undertaken.

The Ernst & Young report referred to above provides an example of a new way of thinking. Essentially it is arguing that the development, ownership, management and funding of infrastructure requires a quite different approach in order to get best value for communities. It makes the case for a new multi-council approach to facilitate effective decision-making and the actual ownership, management and funding of infrastructure (taking the view that regional organisations of councils simply do not have the necessary powers or an appropriate decision-making structure).

This kind of argument points to using structures that are inherently commercial in their nature, as compared with the very highly regulated and process driven environment of local government. New South Wales local government has long had the statutory power to form companies, but this is constrained by a requirement for ministerial approval. Under the previous Labour State government approval was given only very reluctantly, and then strongly conditioned in order to protect the terms and conditions of existing employees – in other words, effectively preventing the use of companies as a means of significantly improving productivity.

Another barrier to approval has been the fact that there is nothing in the legislation regulating the post-establishment governance of local authority owned companies. This created a reluctance at an official level to recommend approval because of the risk involved if something should later go wrong. It also means that it is difficult to give any kind of firm assurance either to elected members, or to a council's public, that activities will remain appropriately accountable – there is a real fear that placing activity in a company structure simply takes it outside the council's control and oversight.

New Zealand has been pioneering a new approach to the governance of local authority owned companies. It's explicitly designed to ensure that on the one hand, the company remains accountable to elected members and on the other that the Board of Directors is free to get on with the business of the company. It

involves an iterative process based around a document known as the 'statement of intent' agreed between the board and the council, and setting out a wide range of matters, including the nature of the business the company will undertake, key financial and non-financial reporting indicators, accountability provisions, how it will handle major acquisitions or disposals and much more.

It is proving a very useful tool in lifting capability, and bringing new skills into the council family which could not be recruited directly onto staff. It is showing great promise in underpinning a new and much more productive approach to developing shared services, and it is improving accountability to elected members as compared with the situation with (say) a conventional council business unit.

There is one significant caveat. Making the council owned company model work well, whether it is owned by one or multiple councils, requires very real skills and understanding of governance coupled with expert support in areas such as monitoring performance and selecting directors. The New Zealand experience suggests that the best way of achieving the required standards is for the sector as a whole to develop a dedicated resource to provide support for individual councils in monitoring, director appointment and review, and professional development.

The SEROC/ACT relationship

The significance of the SEROC/ACT relationship can be seen in the following extract from the recently executed memorandum of understanding between the ACT and New South Wales governments:

The ACT and NSW enjoy a close relationship as a result of unique cross border circumstances. Canberra's location in the centre of the South East Region renders it the principal service centre for the surrounding LGAs in NSW. The ACT Government acknowledges the importance of the South East Region and is keen to optimise the potential of this area by working closely and collaboratively with the NSW Government.

Enhanced cross border collaboration across a range of issues has long been a focus of the two jurisdictions. The Regional Management Framework (RMF) agreed in 2006 and the staging of the Regional Leaders' Forum (RLF) from 1995 reflect this focus. More recently the establishment of the South East Regional Organisation of Councils (SEROC) and the network of Regional Development Australia (RDA) Boards have added a further dimension to regional engagement and opportunities for collaboration.

Sustained population growth, continued economic interdependencies and the complex issues of service delivery have given rise to a new set of relationship drivers within the broader South East Region. Promoting targeted service delivery, sustainable regional growth and future economic prospects offered by infrastructure investments are important priorities for both jurisdictions. These priorities will be supported by an agreed Strategic Regional Direction Statement for the ACT-South East NSW region.

Although the MOU is an agreement between governments, much of the delivery contemplated by the agreement will necessarily involve at least those SEROC councils that form part of the greater Canberra Metropolitan region (as broadly

defined by Canberra's economic footprint, best reflected in journeys to work). Some sense of the significance of the relationship can be gained from the priority actions identified in the MOU which include:

- Strategic Regional Direction and Priorities.
- Land Use Planning and Infrastructure.
- Integrated Service Planning, initially focussing on the health and education sectors.

Delivering on these priority actions will be a major focus not just for governments, but for SEROC councils. An issue for the SEROC board is what arrangements should be put in place to facilitate the necessary joint working with the ACT. Should it be part of the work of SEROC itself, or should some separate mechanism be established, bringing together the ACT and those SEROC councils that see themselves as significantly affected by cross-border relationships?

The complexities are highlighted by the current controversy over residential development under noisier sections of a flight path south of the airport at Tralee. See: <http://www.canberratimes.com.au/act-news/airport-warns-of-flight-path-housing-deferral-20121112-298wl.html>

Part II Draft Submission for the Independent Panel

**Chairman and Members,
New South Wales Independent Local Government Review Panel**

1 INTRODUCTION

This submission is presented by the South East Regional Organisation of Councils (SEROC). Its purpose is to address those matters SEROC sees as priorities for consideration by the Panel.

SEROC comprises 12 councils located in the South East of New South Wales, covering an area of around 60,000 square kilometres and supporting a population of approximately 182,000 people, together with the Australian Capital Territory, with approximately 368,000 people.

Current members are: Bombala Shire Council, Boorowa Shire Council, Cooma-Monaro Shire Council, Eurobodalla Shire Council, Goulburn Mulwaree Council, Harden Shire Council, Palerang Council, Queanbeyan City Council, Snowy River Shire Council, Upper Lachlan Shire Council, Yass Valley Council, Young Shire Council and the Australian Capital Territory.

SEROC councils range from small rural councils to a rapidly growing 'sea change' Council, an important regional Centre, a major tourism destination, and several peri-urban councils which are for all practical purposes part of the greater Canberra metropolitan region (defined in economic footprint terms).

In this submission we cover the following matters:

- A preferred approach to the panel's review.
- Rating and funding.
- Governance.
- State government/local government collaboration.
- Consolidation.
- SEROC/ACT relationships.

2 A PREFERRED APPROACH TO THE PANEL'S REVIEW

The SEROC Councils welcome and support the State government's collaborative approach to reviewing the role and function of local government, and its commitment that there will be no forced amalgamations. We are pleased to see this reflected in the terms of reference for the Panel, especially the first and fourth bullet points:

- ability to support the current and future needs of local communities
- ability for local representation and decision making.

As with many others in local government, we have been very concerned that much of the public debate and experience in recent years of local government reform has over-emphasised the service delivery aspect of local government's role and under-emphasised its role in promoting and protecting local democracy. We commend to the Panel the view of the role of local government put forward by Professor John Stewart of Birmingham University in work for the Scottish Government:

Local government is not distinguished by the services it provides, important though they are to its working. Other bodies can, and in some cases do provide those services. It is distinguished by its basis in local democracy. The strength of local government depends therefore on its basis in local democracy and from that basis it gains its legitimacy.¹³

New South Wales councils face increasingly differentiated circumstances, especially outside the Sydney metropolitan area, as a result of a number of influences including demographic change, climate change, the ongoing impacts of the global financial crisis and much more. Necessarily, responding to the local impact of these trends will require the development of solutions, and partnerships to underpin them, which are grounded in the local community. Strong local democracy will be an absolute prerequisite to the ability to deal effectively with the challenges which New South Wales communities are facing and will continue to face for the foreseeable future.

This is not to downplay the importance of capable local government, and of ensuring that services are delivered at the least possible cost (both direct and indirect). It is to emphasise the primacy of local democracy as the core role of local government, and the pre-requisite to local government being able, over time, to perform its other roles.

We invite the Panel, in its recommendations, to endorse the primacy of local democracy as the core role of local government. As part of that we propose two changes to legislation for which we seek the Panel's support in the work of the Local Government Acts Task Force:

- The first is to incorporate in the charter section of the Local Government Act local government's role in respect of local democracy (in passing, we note that at present the act contains no reference to democracy). A possible precedent is the first leg of the purpose statement in the New Zealand Local Government Act 2002, which is "to enable democratic local decision-making and action by, and on behalf of, communities". Although that country's government is currently promoting extensive changes to its Local Government Act with the stated objective of encouraging local government to concentrate on its core activities (envisaged as local infrastructure, local public services and local regulation), it has left that element of the purpose statement unchanged.

¹³ See http://www.scottishaffairs.org/backiss/pdfs/sa25/sa25_Stewart.pdf

- Second, we also recommend a complementary change to section 51 of the New South Wales Constitution Act, which provides for a system of local government within the state. Currently, that section is worded as follows:

51 Local government

(1) There shall continue to be a system of local government for the State under which duly elected or duly appointed local government bodies are constituted with responsibilities for acting for the better government of those parts of the State that are from time to time subject to that system of local government.

(2) The manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions shall be as determined by or in accordance with laws of the Legislature.

(3) The reference in subsection (2) to laws of the Legislature shall be read as a reference to laws that have been enacted by the Legislature, whether before or after the commencement of this section, and that are for the time being in force.

(4) For the purposes of this section, the Western Lands Commissioner, the Lord Howe Island Board, and an administrator with all or any of the functions of a local government body, shall be deemed to be local government bodies.

We suggest adding to subsection (2): "Which shall include the promotion of local democracy through enabling democratic local decision-making and action by, and on behalf of, communities."

3 RATING AND FUNDING

In this section we deal with the rate peg, Crown exemptions, farmland, the pensioner rebate, equalisation, and a proposed local government Finance Authority.

Rate peg

The SEROC councils invite the Independent Panel to recommend that the rate peg be abolished.

The international evidence on the impact of rate pegging regimes was extensively canvassed in 2009 in a report prepared for Local Government New Zealand at a time when LGNZ was concerned that the New Zealand government would introduce a peg on local government rates in that country. The research and findings of that report are summarised in Appendix I.

The SEROC councils acknowledge that the approach IPART has adopted to the approval of exemptions from the rate peg has mitigated the impact of the peg quite significantly in terms of the ability of councils to raise essential revenue. However, it has done nothing to mitigate the impact which most concerns the SEROC councils: the strong implication that councils cannot be trusted, something which seriously undermines the credibility and effectiveness of councils and their ability to build strong relationships with their communities.

The continuance of the peg also suggests a lack of confidence in the accountability and democratic processes under which councils operate, including the community strategic plan which provides ample opportunity for ratepayers to express their views on council spending proposals over the short, medium and long-term.

Crown exemptions

Two of the SEROC councils, Snowy River and Eurobodalla, have very significant areas of state land within their boundaries. Snowy River is the gateway to Kosciuszko National Park and Eurobodalla is the site of the Eurobodalla National Park.

Both parks attract very significant tourist numbers. Both councils face significant demands on infrastructure and upkeep of public facilities to meet the needs of tourists. Each faces a significant imbalance because they are unable to rate state owned land.

Generally, the provisions exempting state (or Federal) land from local government rates appear to derive from the view, at the time exemptions were first enacted, that the Crown should not be liable for taxation.

In 2007, the New Zealand government established an independent inquiry into rating which, amongst other things, considered the rationale for and history of the Crown exemption. It commissioned research which reviewed the history of the Crown exemption in New Zealand, Australia, Canada and the United Kingdom. It concluded that:

The Crown exemption may reflect the view that the Crown should not be bound by a lower level of government, and the religious and charitable exemptions presumably reflect some concept of community benefit that might justify exemption. But overall the rationale for these rating exemptions is unclear. The Panel considers that land should not be exempt from full rates, unless there is a clear justification.¹⁴

It is clear that policy understandings in this area have changed significantly since exemptions were first included in legislation. Since 2000, government-owned property in the United Kingdom is no longer exempt from the non-domestic rate. In Canada the Government makes payments in lieu of property taxes to local governments in recognition of "the valuable benefits received from both provincial and municipal levels of government in Canada".¹⁵

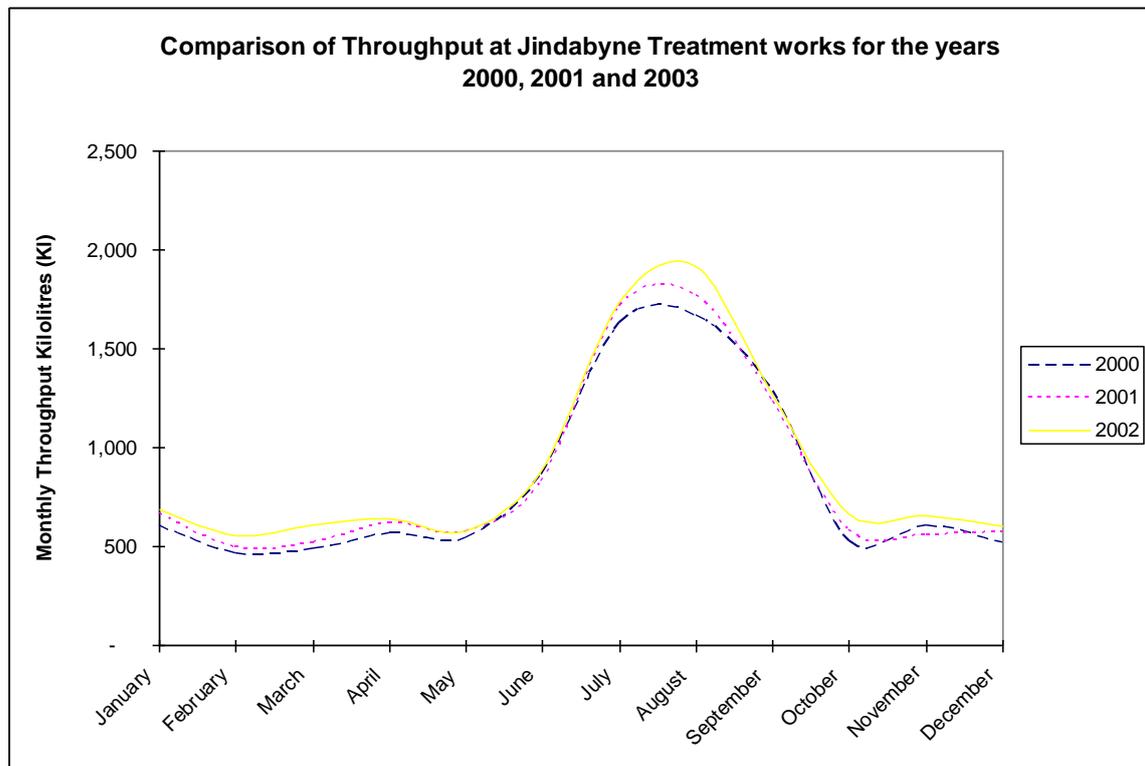
In our view, the continued Crown exemption is now contrary to well accepted principles of public policy, which include the desirability that activities should bear their own costs so as to better promote efficient resource allocation.

We accept there could be a pragmatic argument the Crown exemption in respect of activities which are generally distributed across all of local government is

¹⁴ Both the report of the inquiry, and the background research into rating exemptions, can be found at: <http://ndhadeliver.natlib.govt.nz/ArcAggregator/frameView/IE12126512/http://www.dia.govt.nz/Agency-Independent-Inquiry-into-Local-Government-Rates-Index>

¹⁵ Public Works and Government Services Canada, "Payments in Lieu of Taxes Frequently Asked Questions" <http://www.pwgsc.gc.ca/pilt/text/faq-e.html>

relatively harmless, as each community bears broadly the same burden (although the distortion in terms of resource allocation remains). However, we consider the situation is very different for those councils where the exemption relates to major state land holdings which enjoy substantial use by people from across and beyond the state. Both Snowy River and Eurobodalla are in this situation. To give an illustration of the nature of the impact, the following diagram shows the seasonality of inflows to the Jindabyne sewage treatment plant:



This reflects an increase in normal overnight population from 3000 for most of the year to 10,000 during the peak winter months (ski season). Although the data is now some years old, the pattern today would be at least as dramatic.

The capital and operating costs are borne extensively by the permanently resident population, which has no means available of recovering any part of the cost from the National Park, or businesses based in the National Park, despite the fact that they are significant beneficiaries.

In addition, the Snowy River Shire faces substantial other costs in areas such as waste removal, maintenance of public facilities, roading, and regulation and planning which it cannot recover from park usage.

Eurobodalla Shire faces similar issues with people coming to the Shire for the recreational benefits offered by the National Park.

The SEROC councils consider that dealing with this anomaly is an important issue which should form part of the Panel's recommendations. Options are:

- A direct recommendation to repeal the Crown exemption, at least in respect of state-owned park lands.

- A recommendation that, as a matter of urgency, the State government undertake a review of the Crown exemption (and other exemptions?) with the objective of ensuring that individual local authorities are not required, by virtue of exemption provisions, to carry significant costs which they cannot recover from users or an acceptable proxy for users.

UCV versus ICV

The SEROC councils invite the Independent Panel to recommend a change in the valuation base for local government rating from unimproved capital value to improved capital value. We recognise that this is a complex issue and one on which there is not, and probably never will be, a consensus across the whole community.

Nonetheless, we consider that the UCV methodology introduces a number of distortions, and unfairly distributes the burden of funding local government activity because of the effect of the 'discount' received by property owners whose properties carry substantial improvements.

We adopt the reasoning put forward by the Local Government Association of New South Wales and the Shires Association of New South Wales in their joint submission to the Productivity Commission's 2007 Inquiry 'Assessing Local Government Revenue Raising Capacity':

While it may be argued that UCV methodology theoretically promotes the highest and best use of land, many would argue that a ICV basis allows for more equitable outcomes. ICV provides a more accurate reflection of the market value of a property and the owner's capacity to pay.

ICV would help alleviate the apparent distortion where, for example, very high value home units pay significantly less rates than free standing homes (of comparable or lesser value) in the same council area. For example, many high value units in North Sydney City Council area pay minimum rates while other properties pay significantly more.

Outside a rate pegging environment, capital values could increase a council's rate revenue raising capacity by increasing the valuation base. Within a rate pegging environment, there may be indirect advantages via greater flexibility to maximise rate revenue through special rate variations; for example, better targeting of capacity to pay.¹⁶

The pensioner rebate

While all states provide pensioner concessions, NSW is the only state that requires councils to fund approximately half the cost of the concession.

The expense of the rebate is jointly funded by councils and the NSW and Federal Governments on a 45:50:5 basis. The level of the compulsory rebate has been static since 1993. Similar pensioner rebates are provided in other states and territories but are fully funded by the respective state and territory governments.

¹⁶ See p11 of http://www.pc.gov.au/data/assets/pdf_file/0009/65943/sub052.pdf

In a submission to the 2007 Australian Productivity Commission inquiry assessing local government revenue raising capacity, the Local Government and Shires associations argued:

The cost of compulsory pensioner rate rebates is a rapidly growing burden for many councils and is affecting the level and range of services that councils are able to deliver. The scheme already costs some individual councils well in excess of \$1 million annually. The total cost to councils is now around \$76 million annually. This is the result of an ageing population. The impact on councils is uneven with higher concentration of pensioners in many coastal councils, regional centres and some older established suburbs. Many councils are advising that they will not be able to sustain the growing cost in the medium to long term.

It should also be recognised that the cost is inequitably distributed. Those who qualify for rebates are disproportionately represented in low income areas, areas that already have a high demand for council services but a limited revenue raising capacity. Given the limited revenue base of Local Government it is unfair that it should be required to fund this form of welfare assistance. This form of benefit should be funded by from the broader revenue base of the state or federal governments. As previously noted, the NSW Government is the only state government that does not fully fund pensioner rate concessions.

The essence of the argument is that the pensioner rate concession is a government income support measure. As such it should not be funded by local government. There are two reasons:

- Each level of government should be required to meet the costs of its own policy initiatives.
- It is widely accepted that income support measures should be designed to be progressive rather than regressive in their impact. As the two associations have effectively argued, the way in which this concession is funded is essentially regressive. In practice, councils when setting their rates need to set rates at a level which will recover the cost of the concession. The greater the proportion of concession-recipients in the rating base, the greater the extent that recipients themselves are in effect funding the concession.

We invite the Panel to recommend that the State government assume full responsibility for funding that part of the pensioner rate concession currently funded by local government.

Equalisation

Equalisation is a tool for addressing horizontal fiscal imbalance - the reality that different entities, with similar responsibilities for service delivery, have differing fiscal capacities such that the ideal of similar entities delivering a similar mix of services to common service level standards cannot be achieved.

This is recognised in Australia's Financial Assistance Grant legislation which has as one of its objects the purpose of improving the capacity of local governing bodies to provide their residents with an equitable level of services.

Financial Assistance Grants are the main equalisation tool currently used within Australia to support local government. The Federal government has recently established a review of the Grants scheme. The SEROC councils consider that the main issue the review needs to address is the current requirement that 30% of Financial Assistance Grants funding is distributed on a per capita basis. The SEROC councils consider that this is inconsistent with the objective of improving the capacity of councils to provide an equitable level of services as it is paid regardless of how strong the council's rating base or other resources may be.

The SEROC councils invite the Independent Panel to recommend that the review of Financial Assistance Grants support the removal of the requirement that 30% be distributed on a per capita basis, so that all FAGs funding is distributed on principles intended to promote the equitable delivery of service.

It is widely accepted that the present amount allocated to Financial Assistance Grants is inadequate to address the limited revenue raising capability of a number of Australia's local authorities, especially those more remote rural and regional councils which have a low rating base, a sparse population, and significant service responsibilities, especially in roading. The Australian Local Government Association has observed:

If local government is to continue to satisfy legitimate community expectations, while also coping with legislated responsibility transfers from other spheres of government, it is essential that the financial relationship between the Australian Government and local government be significantly reformed. A guaranteed share of total Commonwealth taxation revenue should replace the current FAGs arrangement.

The SEROC councils see merit in this approach and recommend that the Independent Panel consider supporting it. However, we also recognise that current fiscal pressures on Federal government suggest that it may not necessarily accept such a proposal (the terms of reference for the FAGs review are explicit that any recommendations must be within the current funding envelope).

There is a further possibility which we invite the Independent Panel to consider. This is the New South Wales government itself funding a further equalisation payment with the objective of supporting smaller, more remote and especially rural and regional councils. Conceptually, such a payment would represent a transfer from more urban, especially Sydney, local authorities, and could be seen emotionally as a payment for open 'rural services' – the investment rural and regional councils and their communities make in maintaining regional New South Wales for the benefit of the entire state.

A local government financing authority

The Local Government Finance Authority of South Australia was established in 1984 with the purpose of facilitating access to financial markets by local government on more favourable terms than individual councils could achieve on their own. The Authority's obligations are guaranteed by the State Treasurer of South Australia, so that its obligations effectively have the same standing as direct obligations of the State government.

In 2011 the New Zealand government legislated for the establishment of a Local Government Funding Agency which borrows in bulk from financial markets and on-lends to individual local authorities. Although it is not government guaranteed, it has a \$500 million liquidity facility provided by the New Zealand government's Debt Management Office. As with the South Australian agency, its objective is to reduce local government's borrowing costs.

In its annual report for 2011-2012 (its first year of operation), the New Zealand agency reported:

The pricing improvement obtained has enabled LGFA to provide considerable savings in interest costs to participating local authorities. By financial year end, LGFA was estimated to be saving AA rated councils approximately 30 bps in annual interest costs on a five year security. For unrated councils, the estimated saving was approximately 40 bps.

In Australia, the recent Ernst & Young report, *Strong Foundations for Sustainable Local Infrastructure*, recommended the establishment of a national local government finance authority, primarily because of the scale of operation it regarded as essential if local government debt was to be a preferred asset class for Australia's superannuation industry.

The SEROC councils consider the establishment of a local government finance authority should be seen as a high priority, not just as a means of reducing the cost of borrowing, but also as a means for improving market access in two different respects:

- Creating the scale of operation required for a preferred asset class for the superannuation industry.
- Providing expertise for council borrowers, especially smaller councils which may not have their own specialist in-house staff.

We invite the Panel to recommend that the establishment of a local government financing authority, preferably at a national level, be given urgency, particularly recognising the need for new tools to assist with addressing the state's infrastructure backlog.

4. GOVERNANCE

There are two separate aspects of governance which the SEROC councils wish to raise with the Panel. They are:

- Governance of the council itself.
- Governance of council activity.

Governance of the council itself

The principal sections of the Local Government Act dealing with the governance of the council itself are: Section 8 – the Council's charter; Section 226 – What is the Role of the Mayor?; and Section 232 – What is the Role of a Councillor? The provisions of the charter are a mix of aspirational, strategic and operational requirements which create a relatively unfocused framework for governance. The

role of the councillor varies between strategic leadership, monitoring/compliance and community advocate. The role of the Mayor, in formal terms as expressed in section 226, is essentially that of a councillor with the additional responsibilities of chairing the council and, in cases of necessity between council meetings, exercising the policy-making functions of the governing body of the council.

These provisions are set within an overall framework of separation of policy and administration between the governing body and the council's general manager. This can provide scope for further confusion over the respective roles, again because of the wording of the legislation. For example, the following provisions of section 232 could be seen as authorising councillors to become involved in implementation:

- to direct and control the affairs of the council in accordance with this Act
- to participate in the optimum allocation of the council's resources for the benefit of the area.

The September 2012 version of the Councillor Handbook includes the following regarding the relationship between the mayor and the general manager:

2.2.1 Relationship between the mayor and the general manager

The relationship between the mayor and the general manager is the most important one in a council and can have a significant impact on the council's performance.

And

The mayor and general manager also play an important role in ensuring that councillors and officials are acting in an ethical manner. The mayor also has a key role in the appointment of the general manager and therefore requires a full understanding of the general manager's role and responsibilities.

These provisions recognise what is the reality in a well functioning council, but in practice go far beyond the formal statutory role of the mayor. They recognise that the mayor is more than just another councillor whose primary additional function happens to be chairing meetings of the council. Rather, the mayor is in practice effectively the leader of the council and community. This highlights a mismatch between the actual role of mayor when governance is effective, and the formal description of the role.

In the SEROC councils' view, the role confusions and mismatch inherent in the way the positions of councillor and mayor are described, and in the wording of the council charter, reflect a failure to modernise local government legislation in order to recognise the demands and types of councils now face. They do not adequately recognise these, and accordingly create difficulties in addressing them.

There is a very real need in today's environment to strengthen the strategic role of the mayor in particular, and councillors in general, to cope with what are the

major long term shifts that require a community level response if they are to be effectively managed.

Three examples from within the SEROC region will illustrate this.

Agricultural productivity

The first example is the impact of long-term improvements in productivity in agriculture, horticulture and forestry. Over a number of years productivity has been increasing primarily as the result of replacing labour with machinery. Associated with this has been an ongoing increase in the skill requirements needed to cope in a more complex work environment, including typically a requirement for a high degree of computer literacy for a growing proportion of the workforce.

The improvement in productivity has led directly to a decline in employment, a reduction in population in affected areas, and all too often a loss of services as a critical mass of service users is no longer present.

At the same time as rural services are in decline as a consequence of productivity improvement, so the nature of the rural workforce itself is changing to reflect higher skill demands. Increasingly, the skilled rural worker of the future will be someone whose partner, if they have one, will also be highly skilled and quite likely have their own separate career which they wish to maintain. If they have children, they will want access to good quality schooling and a range of other cultural, artistic and recreational services.

This combination of circumstances suggests that the agriculture, horticulture and forestry sectors could be facing a long-term and complex crisis in the recruitment and retention of the high skilled rural-based workforce they will increasingly need. A major component of addressing this crisis will be finding ways of reversing the growing deficit in the range and quality of services available within rural areas. The SEROC councils see this as requiring strong strategic leadership from local councils, and especially from their elected leadership, building partnerships across councils, communities and primary sector interest groups to find solutions for what is an extremely challenging issue.

Population ageing

The second example is the impact of an ageing population. This will affect all SEROC councils in varying degrees, but will have a particular impact on Eurobodalla as a leading 'sea change' council. Using population projections prepared by the New South Wales Department of Planning based on the 2006 Census, Eurobodalla's population is projected to grow from 39,900 in 2011 to 54,900 in 2036. At the same time, the proportion of its population aged 60 years or over will increase from 33.3% to 45%.

Australia's ageing population is recognised as one of the major challenges facing the public sector at all levels. It is widely expected that the public sector on its own will be unable to provide the full range of services an ageing population will expect. A variety of strategies will be required in order to cope. These include 'ageing in place' where possible rather than relying on institutional care; and drawing increasingly on community support both through third sector organisations, and through an increased contribution from individuals and families

themselves (which will probably need to include innovative means of enabling older people to draw on their own resources).

Much of this response is going to require strong community leadership, including, for example, facilitating/encouraging the formation of cooperatives of older people as a means of accessing services and as an alternative to expensive private sector provision.

The greater Canberra metropolitan area

The third example is the somewhat unique situation, in New South Wales, of the fact that several SEROC councils are in practice part of the greater Canberra Metropolitan region (as defined in economic footprint terms). As the Canberra Spatial Plan recognises:

A range of issues affect the whole region, not just the ACT. They include: the accommodation of future population growth, water management and environmental protection, support for economic diversity and growth, regional transport linkages, and provision of facilities and services.

This requires long-term strategic leadership from the councils involved, including developing innovative means of managing cross boundary activity where there is often little or no statutory provision explicitly recognising the complexities involved.

Strategic leadership

The SEROC councils consider that these three examples highlight the need for a fresh look at the role and responsibilities of elected members, in particular in providing the strategic leadership communities will need to address complex and long-term issues.

Addressing this should include revisiting the provisions of the council charter, and the statutory definitions of the role of councillors and mayor. The purpose would be to:

- Highlight the role of both the Council, and elected members, in providing strategic leadership to their communities to address the major long term issues the community faces. This should include a rewrite of the roles of councillors and mayors so that their overarching responsibility is providing strategic leadership. This could be accompanied by making statutory provision for a governance statement in which the council would set out its approach to managing a series of critical governance/monitoring responsibilities, for example, risk and assurance, audit, professional development, succession planning.
- Clarify the way obligations/expectations are expressed so that matters that are inherently issues of good practice are separated out into a specific section focused on the principles by which a council should operate.

The role of the mayor

A new emphasis on the strategic leadership role, coupled with the recognition of the central role councils will play in addressing long-term complex issues affecting

their communities, will also raise questions about the role of the mayor within New South Wales local government.

This is an issue on which there is a range of opinions, with some councils downplaying the role of mayor, and others arguing the case for a more significant role. There is a similar division over the question of whether mayors should be elected by their peers, or at large.

The SEROC councils recognise that there is a growing tendency both internationally and within Australia for mayors to be elected at large, and to have significant additional powers. The most recent example is the change in Queensland legislation so that the powers of mayors now include:

- leading and managing meetings
- proposing the adoption of the budget
- liaising with the chief executive officer on behalf of the other councillors
- leading, managing, and providing strategic direction to, the chief executive officer
- ensuring provision of information to the Minister about the local government area.

Considering the types of issues councils will be required to address in the future, the SEROC councils suggest that if there is to be an enhanced role for the mayor it should also include specific responsibility for taking the lead in building relationships with key external and internal stakeholders (that is, internal to the council's community) as part of leading the development of the council's long-term strategies. The purpose of making this explicit is not just to formalise what is often already the way many mayors understand their leadership role, but to send a strong signal to the broader community supporting the significance of the council's leadership role, especially as exemplified through the role of the mayor.

In respect of governance of the council itself, the SEROC councils also acknowledge the growing evidence that individuals and communities want to have more of a direct say over decisions which affect them specifically. We do not favour creating a further and lower statutory tier of governance for individual communities within the district of a council. We do however encourage the Independent Panel to propose that the local government sector itself (perhaps through Local Government New South Wales) promote good practice in community governance. The Australian Centre of Excellence for Local Government report *Evolution in Community Governance: Building on What Works* would be a good starting point.

Finally, the SEROC councils identify two further areas in which the Independent Panel could usefully make recommendations:

- The first is remuneration of elected members. This is a controversial area, and practice across Australia differs widely. The SEROC councils consider that remuneration should reflect the responsibility of the roles both of councillors and mayors, and the increased complexity confronting local government. It should also recognise that time commitments involved are often expensive, and simply remunerating elected members on what amounts to an honorarium basis may have the unintended effect of excluding well-qualified candidates from putting themselves forward.

- The second area, which in a sense is related to the first, is the continuing professional development of elected members. It is now accepted practice in many professions, and in other spheres such as company directorship, to require or at the very least encourage people to undertake ongoing professional development in order to ensure that their skills and knowledge remain relevant and up-to-date. The SEROC councils consider that there is very real interest within local government to enable elected members to acquire skills especially in relation to changing demands (for example the proposed use of council-owned companies discussed elsewhere in this submission).

The SEROC councils recognise that there are a number of providers already active in offering professional development opportunities. Our concern is that too often these do not appear to meet the needs councils themselves believe they have, and are offered in ways that fall short of attracting strong support.

We invite the Independent Panel to support a review of ongoing professional development for elected members, including the possibility of setting minimum required standards as is already the case for a number of professional bodies.

Governance of council activity

The present local government act is drafted on the assumption that all local government activity is inherently homogenous in terms of the appropriate operating and accountability framework that should apply. That is perhaps understandable given that, at the time the Act was drafted, the Australian economy had only relatively recently emerged from a highly protected environment.

The reality is that local government activities differ significantly one from another, and the implications of these differences have become particularly important in what is now an open and competitive economy.

The recent Ernest & Young report, *Strong Foundations for Sustainable Local Infrastructure*, prepared for the Department of Regional Australia, Local Government, Arts and Sport argues strongly that the current arrangements for the ownership, management and funding of local authority infrastructure are inappropriate. The essence of the argument is that infrastructure raises issues of scale, skill, complexity and commercial disciplines which do not fit easily with a local government framework. Regional Organisation of Councils are also seen as inappropriate because of their decision-making characteristics and limited powers. Ernst & Young argued that a new structure is required.

Similar issues arise with other significant local authority activities, for example, management of council property portfolios and council road maintenance and related work. (The ownership and management of plant and machinery is a classic commercial activity which would benefit from being run as a plant hire business to optimise the use of scarce capital.)

New South Wales councils have the power to form commercial structures – specifically companies – but this power has seldom been used. Section 358 of the Local Government Act permits a council to form or participate in the formation of a corporation or other entity, or acquire a controlling interest in a corporation or other entity only with the approval of the Minister. The SEROC councils

understand that the present Minister has a more open attitude than his predecessor under the previous government, but that there are still concerns about post-establishment governance.

The SEROC councils believe that the option of council controlled companies has the potential to provide significant efficiency and other benefits if it is properly used. Central to facilitating proper use is the establishment of a robust post-establishment governance regime. The New Zealand local government model of Council controlled organisations provides a precedent which we commend to the Independent Panel. Under this approach:

Features of the NZ local government model of Council controlled organisations

- The Board of Directors of a Council controlled company is required to operate in accordance with a statement of intent agreed with the council – that is, with the elected members (who will no doubt seek advice from officers).
- The statement of intent covers a wide range of issues, including the nature of the business which will be undertaken, the process the board will follow in respect of any significant acquisition or disposal, financial and non-financial performance indicators, reporting requirements, any requirements the council may have for the company to consult with the community and any other matter the parties may agree should be included.
- The relationship between the council and the company takes the form of an ongoing dialogue. It commences with a letter of expectations from the council to the Board of Directors setting out the council's expectations for the forthcoming year. The board then prepares its business plan and its statement of intent taking those expectations into account. The business plan and statement of intent are then agreed with the council and set the operating framework for the company for the forthcoming year. The relationship then continues through regular reporting (sometimes quarterly, sometimes half-yearly). In addition, there is normally a 'no surprises' expectation on both parties to keep the other informed of any significant developments.

An essential element of this entire process is a very good understanding of the nature of corporate governance and the different but complementary roles the parties play. This includes an acceptance that generally elected members or officers should not be directors of Council controlled companies. (One exception is where multi-council owned companies are used as a vehicle for promoting shared services, where it is seen as appropriate for chief executive officers to be directors because that role is complementary to their CEO responsibilities.)

The SEROC councils invite the Independent Panel to encourage the use of council owned companies in appropriate circumstances, and to advocate for section 358 to be amended by removing the requirement for ministerial approval and including provisions for post-establishment governance: along the lines of New Zealand's Council controlled organisations regime.

5. STATE GOVERNMENT/LOCAL GOVERNMENT COLLABORATION

There are three aspects of State government/local government collaboration on which we wish to comment. They are:

- The 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.

More effective use of public assets

The State government and State government entities together own a wide range of property assets within every New South Wales council district. The most obvious assets are in the health and education sectors. Significant holdings are found also in police, housing, justice, corrections and a number of other agencies.

Quite often these assets may be under-utilised or surplus to requirements but remain within government ownership broadly defined. The SEROC councils consider that, when a public asset is under-utilised or surplus to requirements, there should be a presumption in favour of making it available for use by the community.

We note that the report of the Property Asset Utilisation Task force is to be released shortly. The Minister for Finance and Services, in answer to a parliamentary question at the time of establishment of the task force, stated:

The new task force has been established to undertake a comprehensive stocktake of all property assets and to create a strategy on how to use them. The strategy will include plans for asset acquisition, management and disposal, with the goal of avoiding duplication and maximising functionality, asset value and public value.

What we are proposing should be entirely consistent with "maximising functionality, asset value and public value".

We recognise however that achieving our objective of enabling community use, where appropriate, requires more than just a presumption in favour. It needs a clear understanding of how to proceed with establishing shared use, including how to reach agreement on defining and meeting any additional costs to the asset owner resulting from shared use, as well as any other operational requirements which may arise, including in areas such as security.

We consider this will require an agreement between the local government sector and the State government covering matters such as the obligation to allow shared use, and the terms and conditions under which shared use should proceed. The SEROC councils consider that the appropriate parties to arrive at such an agreement are the Department Finance and Services on behalf of the State government, and Local Government New South Wales on behalf of the local government sector. We invite the Independent Panel to recommend this.

Collaboration in the delivery of and access to state government services

Here our interest is in the role of local government both in providing services to state agencies, and in facilitating and/or delivering access to services by people and organisations within its communities.

An example of the first type of collaboration is the practice through which a number of councils contract to RMS for the maintenance of State roads. From the perspective of local government, this is an extremely important relationship. For a number of especially smaller and more rural and regional councils. RMS contracts are an important contributor to the ongoing viability. They enable significant economies of scope and scale, especially in the ownership and management of significant capital assets, and maintaining a critical mass of people with requisite skills which can also be used in the business of the council itself.

We understand that RMS is currently reviewing its approach to contracting for maintenance services with an indication that it may be looking to contract with a limited number of major private sector providers in the hope of reducing unit costs. Looked at solely from a RMS perspective, this may be a rational policy. Looked at either from a "whole of government" respect or a "whole of society" perspective the policy may make much less sense:

- From the government's perspective, the issue is not whether a change reduces costs within RMS but whether it reduces overall costs to government. Underlining the viability of local councils will almost certainly have knock-on effects for government itself.
- From a "whole of society" perspective, putting in place a policy which presents a further threat to the viability of rural and regional local government, and potentially undermines employment and the ability to attract and retain skilled staff makes very little sense.

The SEROC councils recognise that it is appropriate for agencies such as RMS to look for the most efficient means of undertaking their activity, but argue that efficiency needs to be viewed from a whole society perspective, rather than a single agency perspective.

We do accept that it would be reasonable for RMS to require councils with which it contracts to demonstrate to RMS's reasonable satisfaction that they are taking steps to ensure that their services are delivered at least possible cost. This could include changing the operating framework from core council to a council owned company, and rationalising the use of capital and other expensive inputs (treating the ownership of plant and machinery as the core of a plant and machinery hire business servicing a number of councils is a possible example).

We recommend that the Independent Panel 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's bottom line.

- Require councils with which it contracts to demonstrate to RMS's reasonable satisfaction that they are taking all practical means to deliver services in accordance with the principles of best value.

We also recommend that the Independent Panel invite the State government to apply these principles to all state agencies which do or could contract with local government.

Facilitating/delivering access to services

The SEROC councils see facilitating/delivering access to services provided by other tiers of government (or for that matter by third sector or other providers) as one of the most significant contributions local government can make both to the welfare of its communities and to the better use of public resources.

The potential is not only great, but covers a very wide range of different options. Examples from current practice include:

- The community budgeting process now being trialled in England in which all public-sector spending within the locality in a given policy area is coordinated at the local level.¹⁷
- Co-design, a model used successfully overseas to engage local government, community organisations and end-use customers to be part of the solution to improve delivery of services and now being trialled in Victoria.¹⁸
- Local government's traditional advocacy role exemplified in examples such as the Golden Plains Health Forum.¹⁹
- Councils taking the initiative to encourage state agencies to come together, share information on their activities, and look for ways of working more closely together. Harden Shire has convened three inter-agency meetings in the past six months and has found that these are making a real difference to the effectiveness of inter-agency working.

These are examples of significant and coordinated approaches to dealing with major service delivery issues. The SEROC councils consider that there is also a very real opportunity for improving the delivery of state and potentially federal government services especially in the districts of smaller councils where access can be a major challenge for service users but where it may not be viable for the government agency involved to maintain an office. We believe that both higher tiers of government should as a matter of practice work with councils to facilitate the devolved delivery of public sector services with the ultimate objective that

¹⁷ See <http://www.communities.gov.uk/news/localgovernment/1933563> for an example in the area of assistance for dysfunctional families.

¹⁸ See

<http://www.mav.asn.au/policy-services/social-community/community-engagement/Pages/default.aspx>.

¹⁹ See http://10thnrhc.ruralhealth.org.au/papers/docs/Reriti_Jaclyn_B6.pdf.

local government becomes a single point of entry. We expect the benefits to include:

- Easier and more straightforward access on the part of users.
- A reduced risk of people "falling between the cracks" either because they approached the wrong service provider, or approached no one because of being unsure where to go.
- Reduced cost to higher tiers of government from the economies of scope of delivering through a single access point.
- An improvement of the viability of especially smaller and more remote/rural councils as the additional activity facilitates better use of their resources and the ability to recruit and retain staff.
- Establishing a culture of partnership between local government and State/Federal agencies. This should still facilitate closer working together on more comprehensive approaches to improving the design, targeting and delivery of significant services, for example, community budgets or co-design.

We recognise that this approach will raise challenges in implementation, for example, privacy and information security issues, staff training, establishing the terms and conditions under which councils would be fairly compensated and determining how an initiative of this kind would be coordinated and managed at the state and/or federal level.

Deciding quite how to proceed may also be challenging. The SEROC councils are aware of the history of difficulty of achieving inter-departmental collaboration in the different initiatives in England over the past decade, ranging from local strategic partnerships through to 'Total Place' and now 'Whole Place' (community budgets). This suggests that rather than try and implement such an approach across the whole of government as a first step, it should be done in respect of services where there is already a significant degree of departmental/local government involvement – health services, education and transport are possibilities.

We recommend that the Independent Panel support greater involvement by local government in facilitating access to and delivery of services that are the responsibility of higher tiers of government. One option the Panel may propose is the establishment of one or more pilots to test the potential of a single point of access, co-design, and the community budget approach to coordinating public sector expenditure on a specific policy area (perhaps care of the aged). Funding for pilots should be placed within the budget of a department with a 'whole of government' responsibility. It would be appropriate for that department to undertake some initial scoping of priority areas, perhaps in conjunction with Local Government New South Wales and then invite proposals from councils on a competitive basis.

Another initiative, one that the SEROC councils believe could significantly improve outcomes at a community level, is the potential for councils to provide back-office services for local voluntary organisations. Too often, local NGOs in particular can

find themselves in significant difficulty because they lack needed technical expertise or experience in areas such as record-keeping, compliance, meeting procedure and governance. Volunteers become involved not because they are enthusiastic about paperwork, but because they want to make a difference in their communities.

The SEROC councils recommend that the Independent Panel support a pilot program for councils to provide back-office services for local NGOs. The expected benefits are not just supporting their ongoing viability but also, over time, providing a natural forum to work through issues such as inter-NGO collaboration, and the avoidance of duplication.

Cost shifting and other state interventions

Cost shifting and other interventions in the role and function of local government have been a persistent feature of the relationship between higher tiers of government and local government across Australia.

It was highlighted in the 2003 Senate committee report 'Rates and Taxes: A Fair Share for Responsible Local Government', more commonly known as the Hawker report.²⁰ and was also a theme in the findings of the recent Australian Productivity Commission inquiry into the role of local government as regulator.²¹

In the experience of the SEROC councils, this is not only a persistent problem, but one which is likely to persist unless there are very specific and clear legislative requirements in place regulating the way in which State government deals with local government. We invite the Independent Panel to consider the principles for provincial/municipal relations set out in the British Columbia Community Charter Act (see Appendix II) and recommend these be considered as a precedent for a similar legislative initiative in New South Wales.

6. CONSOLIDATION

The SEROC councils are concerned three of the five elements of the Independent Panel's terms of reference could be construed as preferring amalgamation over other approaches to dealing with capability and sustainability. The three are:

- ability to deliver services and infrastructure efficiently effectively and in a timely manner
- the financial sustainability of each local government area
- barriers and incentives to encourage voluntary boundary changes.

We make this comment in the context of recent major restructuring of local government in Australian states, especially Queensland and Victoria, where efficiency and capability appear to have been the main drivers of change with comparatively little attention paid to the important role of local government in promoting and supporting local democracy.

²⁰ See http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=efpa/localgovt/report.htm.

²¹ See http://www.pc.gov.au/_data/assets/pdf_file/0007/118564/local-government-volume1.pdf.

The SEROC councils see a very real risk to the future of New South Wales communities if the same approach is applied here. Much of the evidence now emerging about the future role of local government (for example, in support of the English 'Whole Place' initiative or the emerging practice of co-design currently being trialled in Victoria) emphasises the importance of community leadership in building partnerships for the better and more effective delivery of major services.

Amalgamation, and the loss of local identity and local leadership which often accompanies it, should be seen as a last resort, not a first resort.

In looking back at the history of recent amalgamations, we can understand why the emphasis on efficiency and capability receive such prominence when we look at the failure to develop logical alternatives effectively including shared services. We note that the Queensland Local Government Reform Commission was particularly dismissive of shared services commenting in its report:

regional co-operative structures and shared service arrangements generally offer less efficiency and economies of scale than could be achieved through amalgamation (essentially because of the additional overheads they incur). (P 47, 48, volume 1).

The final report of the independent panel to the Southern Tasmanian Councils Authority considering options for reform of local government in Southern Tasmania took a broadly similar view:

Long term and sustainable models of service provision are unlikely to be possible, especially for more complex and politically sensitive areas, through agreements across councils (page 19 of the final report).

The SEROC councils consider these comments should be read as a critique of the current practice within Australian local government for attempting to establish shared services, rather than as a critique of the concept of shared services per se. Specifically, we note that regional organisations of councils, and other inter-council cooperative arrangements, although they have a number of strengths do not provide a good basis for decision making on multi-council activity. In support of this we note both the critique of RoCs in the Ernst & Young report on Strong Foundations for Sustainable Infrastructure²² and potential of the alternative of a multi-council owned company - see Reconceptualising Shared Services, a review of the experience of Bay of Plenty Local Authority Shared Services Ltd²³.

We strongly recommend that the Independent Panel give priority to ensuring that local authorities have the appropriate tools and support required to establish viable shared services operations **before** considering amalgamation as a means of increasing efficiency/capability. This should include the resources required so that councils can understand how to establish a multi-council owned company in the shared services area, and how to establish and maintain appropriate post-establishment governance.

²² Strong foundations for Sustainable Infrastructure, p74, accessed at <http://www.regional.gov.au/local/lqifr/files/20120622-strong-foundations.pdf>

²³ accessed at <http://epress.lib.uts.edu.au/journals/index.php/cjlg/article/view/2422/2653>

7. SEROC/ACT RELATIONSHIPS

A number of the SEROC councils are effectively within the greater Canberra metropolitan area. This creates a unique cross-border situation. Although New South Wales local government has a number of other cross-border situations, none of them is quite as complex as that between Canberra and the adjacent councils. Although, as the New South Wales cross-border commissioner identifies, there are complexities in each cross-border situation (different daylighting hours for children from northern New South Wales attending school in southern Queensland; different traffic and other rules between Albury and Wodonga ...), the Canberra metropolitan situation is unique because of the strengths of the inter-dependencies and the extent to which much of the future growth of the Canberra metropolitan area will take place outside ACT.

The principal relationships between Canberra and New South Wales in terms of cross-border issues are managed between the ACT government and the New South Wales State government within the terms of a memorandum of understanding for regional collaboration between the two governments signed in December 2011.²⁴ Councils have no formal role under the MOU, although they may be represented in specific activity. As an example, the Steering Group for Land Use and Infrastructure Planning established under the MoU comprises the ACT plus the six councils within an hours drive of Canberra – Queanbeyan, Palerang, Yass Valley, Goulburn Mulwaree, Cooma-Monaro and Upper Lachlan.

In May 2012 the ACT government signed a memorandum of understanding with the SEROC councils giving it the status of a member of SEROC. The stated purpose of the MoU is:

The ACT Government's membership of SEROC will contribute to the pursuit of SEROC's objectives of:

- Advancing the interests of the region;
- promoting regional sustainability;
- developing regional cooperation and resource sharing; and
- facilitating regional planning.

There is growing recognition that dealing with cross-border issues is going to require extensive collaboration between the ACT Government and the adjacent councils. Logically, this could include sharing ownership and management of major facilities (especially infrastructure), and coordinating regulatory and other practices. Although ACT membership of SEROC is a significant step forward, there is still no effective means for undertaking joint activity.

Possibilities for establishing such a means appear to exist. New South Wales councils have the power to join in the formation of a company limited by guarantee without requiring any consent. They have the power with the approval of the Minister to join in the formation of a limited liability company.

The former approach would be a suitable umbrella for joint planning and policy development (including perhaps an extension of the Canberra spatial plan, as a

²⁴ See http://www.cmd.act.gov.au/_data/assets/pdf_file/0004/265225/ACT-NSW-MoU-regional-collaboration.pdf .

non-statutory document, to include the Canberra metropolitan region) and to review and recommend options for harmonising regulatory and other provisions. Use of a joint NSW councils/ACT owned company could provide a suitable vehicle for the ownership and management of shared facilities.

The SEROC councils invite the Independent 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.

Part III Proposed work program for SEROC

The purpose of this section is to propose a work program which SEROC councils can adopt to further their objectives of increasing collaboration and improving efficiency, without waiting on the recommendations of the Independent Panel and any measures which result from those.

We have identified four potential areas on which to focus:

- 'Fit for purpose' governance ownership and management of commercial or quasi-commercial activities.
- Shared services.
- ACT/council collaboration.
- State government/council collaboration.

We deal with the last two of these first as, although both are promising, we considered it premature to establish an explicit work program.

ACT/council collaboration

There is obvious potential, including extending the ACT spatial plan to include the C+1 councils, and considering initiatives to rationalise regulatory provisions in the ownership/provision of significant infrastructure. However, there are already a number of initiatives underway to address different aspects of these options, some under the ACT/New South Wales government memorandum of understanding, some through other means, such as regional development committees.

Rather than a formal work program, we recommend that the SEROC councils which are members of C+1 use that forum as a vehicle for discussing with the ACT government the potential of establishing a joint ACT/council controlled company (either limited by guarantee or a limited liability company) as a vehicle for undertaking joint activity which could include:

- Reviewing the potential for harmonising regulatory provisions (which could best be done through a company limited by guarantee, as it would not require any capital investment).
- The joint ownership and management of significant infrastructure serving communities on both sides of the border.

State government/council collaboration

From discussions we have had in the course of preparing this report, our impression is that any formal or semi-formal approach to the state government regarding state government/local government collaboration will need to be

managed on a 'whole of sector' basis, in all likelihood with Local Government New South Wales as the sector representative.

A principal reason for this is the concern at the State government level that developments of this kind are best pursued through a common approach, rather than ad hoc initiatives with the risk of continually re-inventing the wheel. A further reason is the difficulty in getting the support of state agencies if there is not a clear policy and protocol. We expect the recommendations of the Independent Panel to support a common approach.

In the meantime, it is entirely appropriate for SEROC councils to seek out whatever opportunities arise in the normal course of their operation to develop collaborative initiatives and/or seek to encourage collaboration amongst state agencies and with individual councils or groups of councils. Areas where this is likely to be fruitful, even in the short term, include care of the elderly and services for children.

Finally, on the assumption that the report of the Property Assets Utilisation Task Force is supportive of shared use of public assets as discussed above (page 40) we recommend that the SEROC councils do what they can to ensure Local Government NSW acts quickly to negotiate a protocol with the State government enabling shared use.

'Fit for purpose' governance ownership and management of commercial or quasi-commercial activities

We recommend a two-stage approach for this part of the work program:

Stage 1: Designing the governance arrangements and supporting resources.

Stage 2: Selecting and implementing an initial restructuring under new governance arrangements.

Designing the governance arrangements and supporting resources

Developing the post-establishment governance arrangements for the ownership and management of commercial or quasi-commercial activities within local government is a comprehensive task that includes:

- The development of a model constitution and (where more than one council will be involved in ownership) shareholders' agreement for a council owned company.
- Developing a model statement of intent to govern the relationship between the owners and the company, and to ensure the appropriate combination of accountability to elected members and freedom for the board to manage the business.
- Developing the precedents for the annual accountability cycle which starts with a letter of expectations from the council owners, continues through development and agreement on a business plan and statement of intent, and is then supported by regular (quarterly, half yearly) reporting.

- Preparing good practice material to support the appointment and accountability of directors.
- Negotiating agreement with the Minister of Local Government that, until the approval provision in the Local Government Act 1993 is replaced by a general power to form companies subject to complying with the statutory post-establishment governance regime, applications to establish or take an interest in companies complying with this proposed approach will generally be approved.

The work is comprehensive. Experience suggests that there are no real shortcuts. Unless the work is carried out well and fully, there can be a real risk of governance failure.

It is also work that will be of value not only for the SEROC councils, but for all New South Wales councils. We would strongly recommend that the SEROC councils seek the financial support of Local Government New South Wales in return for agreement that the outputs will be available for local government generally.

It may also be possible to obtain funding through the Independent Panel, since part of its work program is to address the future of council owned companies. The timing of this project would fit well with the Independent Panel's own timetable.

We estimate that this work will take in the order of 6-8 months to complete, including gaining sign-off from the SEROC councils, Local Government New South Wales and the Minister's office.

The project team should include people with the following skills and experience:

- In-depth understanding of the governance of council owned companies, including the New Zealand post-establishment governance model.
- Significant experience as a commercial lawyer, including skills in drafting company constitutions and shareholders agreements. Ideally, this person would also have a good understanding of local government law.
- A SEROC chief executive or director of corporate services with significant private sector experience, to provide a 'feet on the ground' perspective.
- A person appointed by Local Government New South Wales (not necessarily a staff member or board member) with significant experience at a senior operational level in local government to provide a sector wide perspective.

Selecting and implementing an initial restructuring under new governance arrangements

Restructuring an existing council activity to bring it under the 'fit for purpose' governance arrangements of a (multi-) council owned company could proceed in parallel with the development of the governance arrangements themselves. However, we recommend that it take place sequentially so that when decisions are taken on what activity, which councils and how to proceed, councillors and

officers have available to them the outcome from the governance arrangements work to help their understanding of the implications.

That said, we now comment on a possible opportunity and how to proceed with it. This is placing the road maintenance and contracting activities of one or more councils in the ownership of a council owned company. Reasons for recommending this option include:

- There is a depth of private sector experience and parallels on which to draw.
- Seeking to adopt a 'fit for purpose' governance/ownership arrangement in order to improve efficiency is an appropriate and in all likelihood necessary response to the RMS review of its current contracting arrangements. Among other considerations, this should make such a restructuring a sensible approach to preserving employment which would otherwise be threatened.
- Transferring existing council businesses into a council owned company would also provide an opportunity to release capital through appropriate structuring of the balance sheet of the new company.
- As compared with other possible examples, such as water and wastewater infrastructure, it is a relatively straightforward option.

Pending completion of the work on governance arrangements, it could make sense for the SEROC councils to scope options for the scope and scale of the future business – which councils, and what should the business cover – just the ownership and management of plant and machinery? or design and construction as well? During this phase it would also be appropriate for councils to consider what non-commercial requirements they might have of the future business, for example, ensuring a minimum capacity at all times in case of natural disaster or other emergency.

We recommend that this work be the primary responsibility of SEROC, but delegated to a council with recognised expertise in this area, and with a commitment to report back no later than the time for completion of the work on governance arrangements.

Shared services

In discussing this aspect of the work program, we begin by re-emphasising context.

First, we expect the Independent Panel to put a strong emphasis on measures that will improve the capability and resilience of councils. This has been a theme of recent restructurings (see the report of the Queensland Local Government Reform Commission and the Australian Centre of Excellence for Local Government's recent consolidation report²⁵). Here the concern is both the ability of councils to attract and retain the calibre and range of staff needed for the

²⁵ Accessed at:

http://www.acelg.org.au/upload/Consolidation%20Final%20Report%20Vol%201_web.pdf

effective management of what are increasingly complex operations, and the resilience of individual councils in the face of loss of key staff.

Next, the Independent Panel's terms of reference can be read as having a preference in favour of amalgamation, reflecting the disenchantment of years of relative lack of progress with alternatives such as shared services. The reasons for this are becoming increasingly well-documented, as with the recent Ernst & Young critique of RoCs, and have relatively little to do with the quality of the people involved, but a lot to do with the inherent inability of this type of structure to make and implement significant decisions in a timely way.

Even the Wellington Blaney Cabonne strategic alliance which is regarded as one of the best examples of a successful approach to shared services, when compared against its potential, falls far short of demonstrating the capability to deliver a shared approach across major council activities.

This context suggests that any initiative by the SEROC councils to demonstrate that shared services represent a realistic alternative to amalgamation as a means of improving council capability and resilience will need to focus on major services where there is potential for real gain, or where the capability issues are significant (for example, infrastructure, for the reasons identified in the Ernst & Young report).

This part of the work program is based on the assumption that the SEROC councils will want to explore the potential of an alternative approach: the multi-council owned company. The chief characteristics of this model are:

Characteristics of the multi-council owned company model

- Governance by a board of directors with a statutory obligation to act in the best interests of the company, rather than a board comprising a combination of elected members and executives each accountable to their own councils.
- A board comprising the general managers of member councils (recognising their obligation for ensuring the efficient and effective operation of the council's organisation).
- A commitment to developing the business of promoting shared services, which underpins the statutory commitment of the board.
- A further commitment that, rather than services being outsourced, shared services should normally be delivered through one or more centres of excellence established within member councils. The purpose is to build the capability and strength of member councils.
- A business approach of scoping potential opportunities for sharing services, developing a business case for approval of the board, and then seeking both one or more councils prepared to act as the centre of excellence for delivering the shared service, and councils prepared to opt in to using the shared service.

- A shared understanding that, once the board of the shared services company has approved a business case, there is a presumption that general managers within the individual councils will support their councils joining the shared service.
- A strong emphasis on accountability back to elected members (through the post-establishment governance regime discussed above).
- Also, strong emphasis on access to information, using high-speed broadband for the linkages between councils so that each council has real-time access to its own information regardless of where the service is based.

Finally, we note two additional contextual issues. The first is that there is already a high degree of collaboration amongst the SEROC councils, often driven by the desirability of sharing scarce resources. The second is that some of the most significant opportunities for sharing services will be cross-border with the ACT (infrastructure, major recreational and cultural facilities, transport, land use planning, economic development). This may suggest the formation of not one but two multi-council owned companies: one based on the SEROC councils as a group, and addressing shared services for SEROC councils minus the ACT; the other focused on cross-border services, and based on the C+1 grouping.

Establishing a multi-council owned shared services company will be dependent on completing the work on governance arrangements set out above. In the meantime, we recommend the formation of an establishment group for the purpose of:

- Reviewing the operation of the multi-council owned shared services company as a model (Bay of Plenty Local Authority Shared Services Ltd is prepared to act as an informal adviser).
- Scoping possible options which should include significant areas of service delivery, such as infrastructure, planning and professional services (building on the earlier work of the Southern Tablelands Assessment Group), and on back-office services such as payroll, HR, rates, management and collection, treasury management, IT...

The establishment group should comprise the executive officer of SEROC, an experienced SEROC general manager, and an external advisor with a strong business services/IT background and a good understanding of local government.

The brief should be to prepare a report for consideration by SEROC covering:

- The development of one or more multi-council owned shared services companies (for SEROC; for C+1). The report should include arguments for or against one or more companies.
- The basic principles of operation that will need to form part of the shareholders agreement – for example, the presumption that once a board of directors comprising general managers approves a business case for a shared services option, as individual general managers within their own councils they will support participation.

- Which services should be given priority as potential shared services, and why (which should include some estimate of the potential benefits both in terms of cost saving and in terms of capability building).
- A timetable for establishment of the proposed shared services company or companies.

The report should be completed so that it is available for SEROC at the same time as the work on governance arrangements is completed.

APPENDIX I

SUMMARY OF A COMPREHENSIVE STUDY OF INTERNATIONAL EXPERIENCE WITH RATE CAPPING REGIMES AND THEIR IMPACTS

SOURCE: Rates Capping: A Study of the International Literature and Experience, June 2009, New Zealand Institute of Economic Research for Local Government New Zealand²⁶

The study was a combination of a literature search and examples from selected jurisdictions (NSW, UK, USA (Colorado, Massachusetts – Tax and Expenditure Limits TELs), Wanganui. It includes a reasonably detailed section (five pages) on rates capping in **NSW**, covering up to the 2009 NSW Local Government Financial Sustainability Review. See below.

The study:

1. Notes that "There are a number of rates capping regimes, with or without a referendum on voter preferences, operating internationally." Refers in passing to Netherlands, Sweden, Denmark, Switzerland. P 6.
2. Cautions on making international comparisons. P 7.
3. Has a bibliography.

Issues/findings

4. International experience indicates restrictions on local government revenue-raising are (p iv):
 - "effective in terms of the single objective of constraining rates increases, but the evidence is compelling that they fail to result in an optimal mix of services and rates. ... infrastructure backlogs have been created ... local choice has been denied .. "
 - "not only predicated on a lack of trust in local demographic institutions, they cultivate it."
 - "have a disincentive effect in terms of robust, long term planning"
5. The most frequently proffered alternative to rates capping is "improving the quality of planning, reporting and citizen engagement".
6. Key observations:
 - "the impact is generally that costs are shifted on to future generations ... council costs tend to rise at a higher rate than household costs. Any gap between income and expenditure is made up by reducing service levels and delaying required maintenance and renewal, particularly of those hard-to-see infrastructures such as drains and pipes." P ii

²⁶ Accessed at http://www.lgnz.co.nz/library/files/store_022/RatesCappingfinal.pdf

- "the internationally accepted best model for making decisions on these kinds of services is via elected representatives undertaking long term planning in consultation with their citizens." P ii
7. Puts the issue in the context of theories of local government and views about the appropriate role of local government. A table (p iii) that summarises the differences in theories and perspectives. Highlights:
 - emphasis on ratepayers v communities
 - local government can't be trusted v local government will deliver appropriate mix of services and rating levels
 - "minimalist" view of local government v "maximalist"/"optimalist" view concerned with overall community wellbeing and place-shaping
 - local democracy as means for local citizens to control council efficiency and lowest possible rates v means to engage with council to set goals and priorities and influence others who have an impact on goals
 - higher levels of government protect ratepayers from councils v partners in local and regional development.
 8. Notes that the 2007 New Zealand Rates Inquiry rejected the option of rates capping on the grounds it was "too blunt an instrument to achieve restraint. It would not recognise the different financial position and expenditure needs of different councils and in any case would only cover the less than 60% of local government revenues consisting of rates." P 5.
 9. Findings cover the questions:
 - Does rates capping work?
 - Does it improve outcomes?
 - Nature of problem being addressed
 - Relationship to planning and reporting.
 8. Section on key mechanisms for rates capping (choice of starting point, calculation of the limit, citizen involvement, making exceptions). P 19.

NSW (pp 7-12)

9. "Rates pegging" since 1977.
10. Result: "Growth in NSW rates has been lower than in every other Australian state and has fallen well short of NSW economic growth rates. ... the state government's own tax revenues have grown broadly in line with gross state product ..."
11. 1993 legislation providing for "greater local autonomy balance by greater accountability measures. Arguably, NSW reflects a 'maximalist' view in their local government act and a 'minimalist' view in their rates pegging regime."
12. Studies examining the impact of rates pegging in NSW:
 - Advancing Local Government: Partnerships for a New Century 2000. UTS. Gives historic context. Finds that "despite efficiency gains, the rate pegging limit has not allowed for adequate service levels or infrastructure maintenance in cases of rapid population growth or other special local circumstances." Also denies local community choice. Making a case to the Minister for higher increases carries a cost.

- Rates and Taxes: A Fair Share for Responsible Local Government 2003. House of Representatives Standing Committee on Economics, Finance and Public Administration. Found that "rate capping in NSW has caused local government ... to raise insufficient revenue .. compounded by rising expectations and reduced grants ... [and] .. a negative impact on strategic planning."
- Independent Inquiry into the Financial Sustainability of NSW Local Government 2006. NSW LGSA. Recommended rate pegging be removed: mismatch between expenditure functions and revenue raising capacity; large infrastructure backlog; citizens willing to pay higher rates for more local services; baseline unfair; opaque and below "generally accepted cost indices". Considered option of citizens' referenda and notes a number of disadvantages of these (p 10). "It was considered preferable to achieve direction as to community priorities in such decisions through ongoing engagement and consultation about council's budget in the framework of its strategic and management planning process."
- National Financial Sustainability Study of Local Government in Australia 2006. Australian LGA/PwC. Similar conclusions to other studies including rates pegging acting as a disincentive to robust long term planning and financial analysis; and councils simply peg back infrastructure renewal spending until they hit the balanced budget point.
- Assessing Local Government Revenue Raising Capacity 2008. Productivity Commission. Shows potential adverse impact of capping on financial sustainability. Also addressed the question of whether councils were increasing fees and charges to compensate and did not find any evidence of this: "little offset from non-rates revenue sources in recent years."
- Revenue Framework for Local Government 2008. IPART. Report gives a good summary of the pros and cons of pegging (views of those in favour and against). P 11. Found a mounting backlog of infrastructure renewals. "It also suggested that more effective incentives for improved efficiency might be provided through planning and reporting mechanisms."
- NSW Local Government Financial Sustainability Review 2009. A corporate sponsored annual series. Of 100 councils, found 16 "financially vulnerable" and 40 "financially unsustainable". Least sustainable councils correlated with fastest growing areas. Overall infrastructure backlog had reduced since the 2006 inquiry.

UNITED KINGDOM p 12

13. The Government sets its expectations each year for maximum rates increases, and has power to cap rates for any council where a particular rates increase is deemed excessive.

The rate capping issue was covered in the **Lyons** inquiry which found "capping is inconsistent with local accountability and embodies a simplistic assumption that local government is inefficient unless forced otherwise." Lyon's view "the solution to the rate of increase in council tax lies not in constraining but in providing real flexibility to set spending plans in a way that reflects local choice about service provision and tax rates." This view was rejected by the Government.

UNITED STATES p 13

14. TELS (in approximately 20 states) are generally considered to be effective. This section lists the characteristics of different types of TELs in terms of their effectiveness in constraining tax growth. Cites one study that concluded " .. TELs are most constraining on the ability of governments serving economically less prosperous and at risk populations to meet public service needs." Notes evidence of increases in user fees and charges.
15. Discussion of **Colorado's** approach, regarded as the most effective in constraining growth.
16. Discussion of **Massachusetts'** statute which limits property tax and the annual increase in municipal taxes. Cites one study on effects of the former on house prices which indicates that it " .. prevented residents from obtaining services they desired and for which they would have been willing to pay." (Mostly affected expenditure on education.)

WANGANUI CITY COUNCIL (NEW ZEALAND) p 15

17. Discusses the Council's annual referenda on key choices for setting the Annual Plan. The 2009 referendum included a question on the level of rates (low, medium and high options). Refers to DIA's case study up to 2007.

FINDINGS

18. Does rate capping work? The evidence is 'yes' against the single objective of constraining rates increases, and on US experience, most effectively when associated with citizens' referenda. However, it works in NSW without CRs.
19. Does rate capping improve outcomes? A harder and more crucial question. See paras 5.2, p 17, for the sub-questions – the counterfactual regarding optimal mix of services and tax; preventing waste; preventing funding of non-core services; or, preventing sensible decisions on local priorities.

Comments on the fact that local government in NZ is now highly conscious of the need to be efficient and keep costs down.

Comments that "The evidence from the US, and NSW in particular, points to the conclusion that rates capping has cut core expenditure to the bone, that a large infrastructure backlog has been created, that local circumstances have not been adequately catered for and that local communities are being denied local choices."
20. Nature of problem being addressed. Discusses low trust in councils as both a reason for and consequence of placing restrictions on rating. Central governments painting themselves as the ratepayers' champion.
21. Relationship to planning and reporting. Discusses the role of "high quality, accessible information, community engagement and ultimately community support for the direction and expenditure decisions of a local authority" in making planning and reporting an alternative solution to the problem of low trust in local government to serve the community's interests. Notes that this takes effort and time. But failing to do so makes the appeal of rate capping as a proxy mechanism understandable.

The report makes the suggestion that "an expenditure category could be created such as, say, "major, non-core" expenditure with that category being subject to a different approval regime (with or without an overall cap)." Para 5.4 p 18.

APPENDIX II

Principles for Provincial Government/Municipal Relationships as set out in British Columbia Community Charter Act

Principles of municipal-provincial relations

2 (1) The citizens of British Columbia are best served when, in their relationship, municipalities and the Provincial government

- (a) acknowledge and respect the jurisdiction of each,
- (b) work towards harmonization of Provincial and municipal enactments, policies and programs, and
- (c) foster cooperative approaches to matters of mutual interest.

(2) The relationship between municipalities and the Provincial government is based on the following principles:

- (a) the Provincial government respects municipal authority and municipalities respect Provincial authority;
- (b) the Provincial government must not assign responsibilities to municipalities unless there is provision for resources required to fulfill the responsibilities;
- (c) consultation is needed on matters of mutual interest, including consultation by the Provincial government on
 - (i) proposed changes to local government legislation,
 - (ii) proposed changes to revenue transfers to municipalities, and
 - (iii) proposed changes to Provincial programs that will have a significant impact in relation to matters that are within municipal authority;
- (d) the Provincial government respects the varying needs and conditions of different municipalities in different areas of British Columbia;
- (e) consideration of municipal interests is needed when the Provincial government participates in interprovincial, national or international discussions on matters that affect municipalities;
- (f) the authority of municipalities is balanced by the responsibility of the Provincial government to consider the interests of the citizens of British Columbia generally;
- (g) the Provincial government and municipalities should attempt to resolve conflicts between them by consultation, negotiation, facilitation and other forms of dispute resolution.

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