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Local Government Legislation Review
Local Government Division
GPO Box 123
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Dear Review Project Team

RE: Public Consultation (Phase 1) – Review of Tasmania’s Local Government Legislation Framework

Glenorchy City Council thanks the Department for providing an opportunity to submit its collective thoughts on ‘how the sector should be governed and what should be considered in developing a new framework that will best support local government and its communities into the future’.

Council’s Aldermen have met to discuss the in broad terms a representative response that hopefully will be used to inform future reform positions. Council also notes and has encouraged individual Aldermen and the general community to engage in the public consultation process.

Council’s response to the identified discussion matters are as follows:

Overview of Local Government

Council recognises that local government is the closet level of government to the community it serves. Accordingly, this local knowledge is of import to both State and Federal Governments, and the private sector, in their respective delivery of services to the community. It is essential that all players in this community service delivery space understand their respective roles and functions and maximise opportunities for proper resource sharing across the board.

Often local government are expected to deliver services on behalf of State and Federal Government program and policy initiatives, especially in the regulatory space, and at times it may appear as mere exercises in cost-shifting. Such interventions often increase the pressure on local government’s bottom line: especially, where there is little opportunity for local government to raise revenue or decrease essential services to offset such costs.

It is important that State and Federal Governments remain mindful that not all local governments are created equal and thus continue to engage with local government in a timely manner before committing the same to resource intensive program and policy initiatives.

In passing, land-use planning matters under the *Local Government Act 1993* (Act) can be an area of tension to elected members: it is a highly technical area to which an elected member must wear a 'different hat' that may conflict with the view as a councillor within that affected part of the community. Whilst strategic land-use planning is arguably the remit of local government, perhaps development control is better placed with a dedicated planning authority.

Council Governance and Powers

Council has a particularly strong view in this area having had adverse findings levelled at the previous administration from a Board of Inquiry and investigations conducted by the Integrity Commission, Tasmanian Audit Office and the Local Government Directorate.

Without going over old ground, it is patently clear that the role of elected members in ensuring appropriate oversight of the council is paramount: elected members should not be able to abrogate their strategic and oversight responsibilities and duties to officers or the community.

It is Council's view that the Ministerial Directions based on the Board of Inquiry's recommendations (issued in late January 2018) provide a road map for good governance and an equivalent framework could be adopted at a guideline level across the local government sector. The Directions focus on several key areas including: governance, training, policies and procedures, committees and memberships, compliance and employment contracts.

In the same vein, there may be an avenue for more prescription around compulsory training for elected members to ensure that an individual remains abreast of local government matters during their respective term. Whilst there is statutory guidance as to the expectations of what an Audit Panel member should bring with respect to experience and acumen, this is not the same for elected members.

Conflict of interest management (pecuniary and non-pecuniary) remains an area where more statutory guidance could be provided to assist newly elected members in determining their reporting obligations and meeting growing community expectations for transparency.

Councils also need to have the ability to engage independent services around their General Manager (as an employee and with respect to performance, contract and review) without putting that individual in a conflicted position, especially with respect to providing qualified advice to Council about themselves.

Democracy and Engagement

Council supports that in this digital age, the move towards adopting on-line voting for future local government elections as an additional means to encourage voter participation, should be explored.

With respect to candidate nominations, and to potentially filter out less committed individuals, it is suggested that a suitable minimum threshold of electors required to endorse the nomination be considered (e.g., 25) before a candidate can stand for a local government election. This may also have a positive impact of reducing the size of ballot forms to a more manageable size and be less confusing for voters, without unreasonably fettering democratic expression.

Some standardisation of what must be included on a candidate's statement to provide better transparency and comparability of candidates for voters would be useful.

There is a sentiment that candidates for Mayor in local government elections should have a minimum tenure of at least 12 months before being eligible to nominate for this office (like the section 41(1)(b) provisions that existed under the Act up to 10 September 2014). Due to the breadth and depth of functions for this important role, it is considered prudent to ensure that the mayoral candidates are suitably prepared having had sufficient exposure to local government operations and Council business as a whole.

It is considered that whilst the General Manager's roll is of utility for non-Australian citizens who reside in a municipal area, non-residents who own or occupy land in a municipal area (e.g., shop occupants or shack owners etc.) or nominated representatives of a corporate body which owns or occupies land in the municipal area, it is not considered core business of local government to maintain an electoral roll. There would be considerable benefit for the Tasmanian Electoral Commission (given its experience in this area) to maintain the General Manager's roll: in particular, to ensure a level of consistent application across the State.

There is some scope to provide legislative provisions with respect to caretaker periods around local government elections (e.g., General Manager appointment and contracts), but care should be taken around being too restrictive as to bring Council operations to a standstill.

Council welcomes further reforms around the declaration of electoral donations to candidates. In the same vein, further guidance around election advertising as they relate to the Internet and social media threads would be appreciated: the current system exposes candidates to technical breaches under the legislation.

Council Revenue and Expenditure

Council recognises that it is a significant core function of the elected body to determine and review the council's resource allocation and expenditure activities.

Most councils rely almost solely on rates and user/service charges for revenue and this is likely not to be completely sustainable into the future unless local governments and their municipalities are better connected with respect to a mutual and well-informed understanding of service levels and cost of delivering those services in the community.

There would be benefit in clarifying the budget variation requirements under section 82 (Estimates) of the Act, so as to balance transparency and operational efficiency.

Performance, Transparency and Accountability

There are several positive legislative improvements that should be entertained in the governance space.

Whilst the improper use of information provisions under the present Act have been extended to include present and former councillors, members, members of an audit panel and employees, this has not been accorded to the disclosure of information provisions (i.e., only affects current individuals). Furthermore, as typical for other offence provisions under the Act, the maximum fine of a penalty not exceeding 50 penalty units (\$8,150 in today's money), does not appear to have much of a deterrent effect in the current climate. A review of stiffer and more meaningful penalties for offences under the Act would be welcome.

Further practical guidance with respect to the reasons that a council meeting may be closed to the public as per regulation 15 of the *Local Government (Meeting Procedures) Regulations 2015* is considered important: there is often a conflict between what Council should discuss in an open forum against duly protecting sensitive, private and or confidential information with respect to decision-making processes.

Council would welcome better powers for the Director of Local Government under the Act that would allow the Director to provide interpretative advice of the local government legislation, as necessary. Similarly, if the Director is required to intervene and perhaps arbitrate on a council issue, this should be open and transparent as practicable so that all local government can benefit from the lessons learnt.

It is understood that the statute of limitations as it applies to investigations for breaches under the Act is insufficient and should be expanded to reflect community expectations (e.g., six years as per *Corporations Act 2001* (Cth)). Also, further refinements with respect to the power to compel individuals to provide evidence to the Director of Local Government akin to similar provisions under the *Integrity Commission Act 2009* or *Audit Act 2008* would be of utility and allow that position to have better investigative powers.

Finally, Council would welcome consideration to any streamlining of the process of establishing Council by-laws.

Conclusion

Council looks forward to continuing to engage with the Review of Tasmania's Local Government Legislation Framework.

Enhancing accountability and transparency across the local government sector, minimising the red tape and administrative burdens on councils, businesses and the broader community, and increasing democratic and community engagement, participation and confidence in local government, are a few of the outcomes that Council hopes falls out of the reforms.

Councils wishes the Review Project Team every success in contemporising the local government legislative framework and provide the flexibility required for a dynamic sector.

Yours sincerely,



Alderman Kristie Johnston
Mayor