

February 24, 2019

The Minister for Local Government
Parliament House
HOBART TAS 7000

Dear Minister

Review of Local Government Legislation

Thank you for the opportunity of contributing to this review.

The Council of Hobart Community Associations (CHCA) is the peak body of City of Hobart community and ratepayer organisations. Due to the timing of the review and the short time frame we have not been able to consult with our member groups and the community in a meaningful way.

Local government is a distinct and essential tier of government. It is, in a very real way, the level of Government closest to meeting the daily needs of residents in terms of amenities and services. It has the best understanding of both the issues and cultures of local neighbourhoods and uses that understanding to provide essential services. It is, however, a unique form of government, not explicitly described in the Australian Constitution with its powers devolved from state governments.

The review should not be an opportunity for the Government to:

- Justify the appropriation of infrastructure owned by councils (purchased through rate-payers' contributions and funds)
- Abrogate its responsibilities of providing programs and services for the wellbeing of the community, particularly health and education.
- Use local government as a 'dumping ground' for the enforcement of regulation it has an unwillingness to enforce or the provision of services it is unwilling to provide
- Further weaken existing planning laws and more powers to state government control
- Undermine Tasmania's unique built and natural heritage
- Reduce third party rights of appeal to planning decisions

Overview of Local Government

What do you think councils will be responsible for in the future?

The CHCA does not envisage wholesale changes to services provided by local governments.

What council activities should be driven or determined by communities?

Triggers of consultation would include but are not limited to development of new subdivisions, council expenditure on improving the amenity of shopping strips, upgrades of parks and other recreational areas, changes in land use, major infrastructure developments, proposed large scale developments and large community events or programs.

Sporting and recreation infrastructure, particularly major regional infrastructure used by residents of multiple municipalities need greater support from the State Government.

Major cultural and tourism events, in particular where custom comes from multiple local government areas, need greater support from the State Government. Tourists rarely stay in one local government area, even when visiting to attend a particular event, but travel across the state benefiting the wider economy. It should not be the responsibility of a single municipality to solely fund events and infrastructure that benefit the wider Tasmanian community.

Where issues relating to the effective operation of Council infrastructure, in particular roads and traffic, are spread across multiple municipalities, it should be the responsibility of the State Government to actively coordinate the management.

The CHCA would like to see community consultation on any activity conducted by the Council or approved by the council likely to change the nature of the community's impact on residents, whether in a positive or detrimental way. The greater the impact, the more resources are needed to ensure that communities are informed and consulted. Communities and the community organisations that represent them have an extensive understanding of the history, issues opportunities and constraints of their neighbourhoods. Consultation should be pro-active and not reactive, with an understanding that token consultation benefits nobody.

We believe that local government should not become involved in matters which are the domain of state and federal governments. While this involvement may be the result of perceived inadequate attention being given to these matters, it should be outside the ambit of local government. The Victorian Local Government Bill Exposure Draft clearly sets out the role and powers of a council and the overarching government's principles and supporting principles.

Given the varying sizes of councils, what consideration should be given to cost of services and the councils' capacity to deliver these?

Councils must prioritise the basic services. It may be cost-effective for some of these services to be provided on a shared service basis with neighbouring municipalities. It is very important that councils do not saddle future generations with today's operational costs.

Council Governance and Powers

It is axiomatic that good governance is pivotal to good government. Accountability, transparency, integrity, community trust and effective decision making can only occur in the context of good governance structures and processes. All too often bad decisions and bad behaviour in local government result from poor governance structures and culture that fails to clearly identify roles and functions, due process and democratic limitations. While some attempts have been made to address these issues through regulation and training, the clear trend across most jurisdictions is to be less prescriptive from a legislative perspective and to devolve both interpretation and decision making to the local level. The Council of Hobart Community Associations (CHCA) supports greater autonomy for local government but only within a clear and comprehensive regulatory framework.

According to the Terms of Reference for the Review of the Local Government Act 1993 (LGA), the following are to be considered;

- Performance monitoring, including financial sustainability, governance and other reporting.
- Council governance and decision-making practices, including options for community engagement, representation, and democratic participation.

There are a number of governance issues the CHCA would like to comment on:

Operational versus Strategic

As noted by the Review Discussion Paper, good governance structures separate strategic decision-making from the operational decision-making. For local government in Tasmania and elsewhere,

the elected representatives are responsible for developing strategy and policy, while staff are responsible for implementing strategy and policy through operations and administration. While such roles and functions are understood at a broad level in local government in Tasmania, they are often ignored in practice. Many of the complaints lodged against councillors relate to this failure to recognise boundaries. This becomes a problem for those councils with low levels of trust between councillors and staff and within the council itself. These dynamics appear to plague smaller councils, which is problematic in a small state like Tasmania with so many councils.

The LGA defines these roles and functions at a very broad level; so much so that there is too much scope for interpretation. The CHCA believes the roles and functions of staff and elected members need to be more clearly defined under the LGA. While this will not resolve the issue, it will lessen the chances of problems occurring in the future. As part of a broader curriculum, all candidates, elected representatives and senior staff, should be required to attend compulsory training in this area.

Recommendations:

That

- 1. the roles and functions of elected representatives and council employees be more clearly defined under the Act*
- 2. compulsory training be mandated under the Act for candidates, elected members and senior staff*

Mayor and General Manager

The relationship between the Mayor and General Manager is the most significant and pivotal to good governance in all councils. A break down in the relationship inevitably leads to a period of instability. The recent Boards of Inquiry are testimony to what can occur if a newly elected Mayor is at loggerheads with an established General Manager. To some extent this should not be surprising; candidates, including potential Mayors, run on a campaign of opposition to decisions made by council. General Managers are perceived as very influential and therefore can be viewed in a hostile way by the incoming Mayor. This can be further exacerbated by as failure on behalf of some incoming Mayors to recognise the need to win majority support around the table to implement any of their agenda. One mechanism to possibly overcome this problem would be to revert to the previous situation where the Mayor was elected by the elected members of council; however, the CHCA accepts it is highly unlikely the community would agree to such a change.

Divisions between a Mayor and GM can lead to factionalism in a council, whereby half the council coalesce around the Mayor and half around retaining the GM. Where this leads to a dysfunctional council there are provisions in the Act which allows for the Minister to intervene. Those provisions are weak and the process long-winded and ineffective. The Local Government Board is ill-equipped by the current legislation to conduct timely and effective Boards of Inquiry into councils.

While it is difficult to mandate for good relationships, our recommendations on more clearly defining roles and functions may lessen the likelihood of conflict. Leadership training may improve the skills and knowledge of new Mayors – while many believe they have such skills, the reality is very few do.

Recommendations:

That

- 1. the Director of Local Government be given legislative powers to intervene in the operations of a council to dismiss a GM under certain circumstances. Those circumstances would include a prior investigation by the Director.*
- 2. leadership training be mandated for incoming and sitting Mayors and Deputy-Mayors.*

- 3. tighter controls be put in place to stop the renewal of long-term contracts for GMs in the 12-month period leading up to local government elections.*
- 4. strengthen the powers of the Minister to intervene in a dysfunctional council through tighter legislative timeframes and processes and limiting the role of the Local Government Board.*

Democracy and Engagement

Compulsory Voting

Democratically elected local councils are answerable to the community that elected them. It is the level of government closest to the people, and yet only about a half of the voting public participate in council elections. Tasmania's local government elections are conducted every four years in October by postal vote. On average 58 percent of the voting public participate in the election.

The Terms of Reference for the Review state that the Review will consider the following;

- Local government electoral provisions, including options for enhancing both voter and candidate participation in local government elections.

One simple and effective way to enhance voter participation in local government elections is by making voting compulsory. It is a long overdue reform that would not only strengthen democracy at the grassroots but also lead to greater community engagement with local government. More democracy is a good thing.

Making voting compulsory would not only increase voter participation from the current average 58 percent to well into the high 90 percent, it would enable the duly elected council to claim they fully represent their local community. Such increased legitimacy strengthens the decision making of the council to implement its mandate.

Given the fundamental importance of voting to a healthy democracy, compulsory voting would place local government on equal footing to both the State and Federal governments. It also lends weight to the efforts of local government Australia-wide to have local government recognised in the Australian Constitution.

This is a major reform that should be easy to implement. The Electoral Commissioner would continue to run local government elections, including pursuing those that fail to vote, as is the case at the Federal and State level.

Disclosure Requirements

The requirements for all candidates, whether current councillors or not, must be the same. Public disclosure should be on the Tasmanian Electoral Commission website no more than 5 business days after a donation or in-kind support is received. Candidates who are not currently elected should be required to declare any donations and support received in the last 12 months no later than 5 business days after nomination. Any kind of monetary or in-kind support from property developers should be banned due to the potential for conflicts of interest.

Elections

Consideration should be given to making it possible for the Electoral Commissioner to permit electronic voting, either at a special booth or at electors' homes. If this was done effectively, the proportion of invalid votes should reduce substantially. Invalid or lost ballot papers cannot be replaced under the current system.

Recommendations:

That

- 1. legislation be amended to make voting in local government elections compulsory for all residents on the electoral roll. (There can be no compulsion for those on the general manager's roll.)*

2. *Councils should aim for gender balance with actions and outcomes included in the council's annual report.*
3. *Caretaker provisions should apply once the writs for the elections have been issued until the poll is declared.*
4. *All local government election candidates should be required to declare all donations and in-kind support within 5 business days of receipt, except candidates who are not currently councillors should be required to lodge details of donations and support received in the 12 months prior to nomination no later than 5 business days of their nomination. Public disclosure must be available on the electoral Commission's website with one business day of receipt of the required information.*
5. *The Act should be reviewed so the electoral commissioner can incorporate electronic voting for the 2022 and subsequent elections.*

Council Revenue and Expenditure

Local Government provides the services and amenities that make life more pleasant. Roads, pavements, parking, drainage, street lighting and cleaning, parks and gardens, playing areas and a wide range of public safety amenities all make our communities more liveable.

People understand the need to properly fund these services and expect that the charges will be universally fair, administratively efficient, and importantly, comprehensive in their scopes. This submission considers those criteria.

Who should pay for the services?

Municipal services have traditionally been financed through the rating of property. As property owners benefit especially from the availability of local services in a way not shared by others, it follows that all landowners in the area should contribute to the provision of these services. In recent times, there has been a shift away from funding services through rating to a reliance on fixed charges and user pays. But no-one has bothered to ask the people which they would prefer.

We should start with the direct question:

"Is a rate on land the most appropriate method of financing the services which councils are authorised to provide, and if not, how should they be financed?"

This question was answered by the 1967 New South Wales Royal Commission on Local Government Finance and Valuation. It gave a clear-cut answer: "A rate on land is the most appropriate method of financing the services which councils are authorised to provide under the Local Government Act."

Nothing has changed in the intervening years to alter that conclusion. It is supported by several inquiries since, most notably, the Brisbane Committee of Inquiry into Valuation and Rating 1989.

Having determined that rating is the best method of funding local government, we must then determine the best rating model. The true principle of rating is that all citizens should contribute to local revenue based on benefits received from local expenditure. This is known as the "Beneficiary Principle". Those who receive the greatest benefit pay more.

Most Councils in Tasmania have historically charged their rates on Assessed Annual Value (AAV). After that system was discredited in an Access Economics report in 2010, a further report, "Valuation and Local Government Rating Review" by the Local Government Office recommended a transition to Capital Improved Value as the preferred system. That was despite Land Value Rating being more economically and administratively efficient and the fairest system according to the benefit principle. The decision was based on the "significant impacts in terms of rating shifts....in

the year of introduction", perhaps because government did not want to upset some residents who currently benefit from not paying in proportion to the benefits they receive.

The only fair method of charging people for the services they require and enjoy is Land Value Rating (LVR), which places the charge on the land only, not the house. Well located land, rich in natural amenity and highly endowed with council services, is highly sought after, and sells at premium prices. Since public expenditure and services contribute to increasing the land value (not the house), it is fair that ratepayers pay in proportion to the increased land value.

In recent times, "Fixed (or Service) Charges" and "User Pays" have become popular methods of funding public services. These are extremely popular with the wealthy, who have already obtained the benefit of higher land values through increased public services but prefer the costs to now be paid as a 'user charge', so they will pay only the same as people who have not received the same windfall gains.

In this way, the gap between rich and poor increases, while society laments increasing inequality. Access Economics highlighted the inequity of Fixed Charges, so recommended they be capped at 50% of revenue, to limit its effect.

The Solution

Remedies applied so far have all been stopgaps. None of them purport to make the rating system fair or equitable. They protect existing privileges. Only Land Value Rating requires property owners to pay rates in accordance with the benefits they receive.

Land Value Rating was considered by Hobart City Council in 2013. The change was considered unacceptable because of the effect on existing ratepayers in the transition. Historical decisions by Council have created a situation where the commercial sector subsidises the residential sector, and residential ratepayers with less valuable properties subsidise residential ratepayers with more valuable properties. In a change to Land Value rating, some people, mostly those with more valuable land, would pay considerably more. There would also be a shift from commercial to residential ratepayers. The proposed change to LVR proved too difficult for Hobart City Council aldermen, who opted to continue with the outmoded AAV system.

A major component of the problem was that Councils must choose between the rating systems (AAV, LV, CIV). The Act does not allow them to choose a mix of the systems. CHCA proposes a simple two-word amendment to the Local Government Act to overcome this difficulty. The amendment would provide an additional option for Councils to determine their rating system, allowing a broader choice for them to move to a more efficient system.

1. *That S. 90 (3) of the LG Act 1993, be amended to read: "**A general rate is to be based on one or more of the following categories of values of land:**"*

The amendment is in bold letters.

If adopted, the effect of the amendment will be to allow Councils to raise their revenue using the rating system that is best suited to the class of property under consideration. For example, in Hobart, commercial property is mostly leased/rented to the occupier by an investor, whereas most residential property is owner-occupied. The amendment would allow HCC to levy rates on commercial property based on its rental value (its usual arrangement), while levying rates on residential property based on Land Value or Capital Value rating.

The potential effect of this small change would be profound. Under the current provisions, modelling shows that a change from AAV to Land Value or Capital Value rating would result in a significant shift in the rates burden from commercial to residential owners. The modified wording would avoid any such shift between sectors, so the debate would be based on the efficiency of Land Value versus Capital Value rating.

Revenue Sources

Local Government struggles to fund all the services it is expected to provide. Yet, there are revenue sources that remain untapped, even after a century of discussion. The Local Government Act should provide the option for individual Councils to collect all revenue available to them.

Betterment

Betterment is the unearned increase in land values arising from government decisions. Rezoning land from agricultural use to residential (or commercial) may create significantly increased land values. At present, the increased value becomes a windfall gain to the current landowner. A topical example is the height limits in the City of Hobart. If a developer can build a 60m or 90m high building on a block of land, instead of the existing 45m limit, then the value of the land will be increased substantially.

Land Value Capture

Land Value Capture is the unearned increase in land values arising from government activities. It is a subset of Betterment but refers to the increase of land values arising from physical infrastructure projects undertaken by government, such as a new railway station, road or bridge. Once again, the change in value may become a windfall gain to affected landowners. The light rail project to Glenorchy provides a topical example.

Increases in land value due to government decisions and activities are publicly-created value. They can be recouped through the rates system to the detriment of no-one. Their collection for public purposes is economically efficient, equitable and self-sustaining. More projects will go ahead because they will be funded, benefitting the whole community rather than a few lucky landowners.

The simple two-word amendment already proposed will also assist in capturing Betterment. If a Council chooses to use AAV or CIV rating, they could still capture 'betterment' gains through an annual charge on the land. There should be no objection from landowners, who, as part of the community, will receive the benefits of the change of use, or the additional infrastructure.

Valuation of Land Act 2001

To ensure the efficient capture of Betterment, an amendment is also required of the Valuation of Land Act 2001. Section 21 currently allows the Valuer-General to conduct a supplementary valuation for any of seven reasons. The collection of Betterment would be an eighth. To be effective, and economically efficient, it is sensible to allow the V-G to conduct supplementary valuations of the land in question without having to revalue all land. The amendment would be an additional sub-clause:

1. *"That, by reason of an amendment to a planning scheme under the Land Use Planning and Approvals Act 1993, the land has materially increased or materially decreased in value;"*

Summary

These simple amendments will allow more efficient, equitable and sustainable revenue collection processes for Local Government. The CHCA recommends them to the Project Review Team.

Performance, Transparency and Accountability

Balance between autonomy and accountability

Councils should only be allowed to vote on topics and issues which are in their jurisdiction.

Oversight and Regulations

Given that Councillors / Aldermen have induction / training available, the trainer (via the General Manager), should control and monitor this. Induction / training should include Code of Conduct training. A summary of training / induction should be included in the council's Annual Report.

The Code of Conduct should be rigorously enforced. This particularly applies to declarations of conflicts of interest.

Information available to the public

The following should be available for inspection unless contrary to certain criteria (legal, commercial, etc.) on council's website and in council's office during business hours free of charge.

- any code of conduct;
- any regulations prescribing rules of conduct of council members;
- any register of complaints referred to in section 5.121;
- any register of financial interests;
- any annual report;
- any annual budget;
- any schedule of fees and charges;
- any plan for the future of the council area;
- any proposed local law of which the council has given public notice;
- any local law made by the council
- any report of a review of a local law
- any written law that the council has a power or duty to enforce
- any rates record;
- any confirmed minutes of council or council committee meetings;
- any minutes of electors' meetings;
- any notice papers and agenda relating to any council or committee meeting and reports and other associated documents;
- any business plan;
- any register of owners and occupiers;
- any contract and any variations to contracts.

Copies should be available at a cost not to exceed the cost of supplying the copies.

Annual report:

- a report from the mayor
- a report from the GM
- an overview of council's strategy including major projects planned for the next year
- financial reports
- information re payments
- auditor's report
- details of complaints received

Drive Performance Improvements

Key Performance Indicators would identify areas that are performing well, or otherwise.

Each council to measure its financial sustainability by having several KPI's that are monitored throughout the year, with the results included in the council's quarterly and annual reports.

Other Matters

What is one thing you would change about the current local government legislative framework?

Penalties available to councils in the planning laws (LUPAA) to provide protection for Tasmania's local heritage are manifestly inadequate. In addition, the current system of Councils having to take offenders to court results in substantial legal costs particularly if cases are referred to the Supreme Court, the Full Court and perhaps the High Court, all or part of which may have to borne by ratepayers even if council wins the case.

There appears to be some doubt about whether magistrates can enforce LUPAA legislation as evidenced in a recent Magistrates Court hearing involving Glenorchy City Council. One suggestion is for Glenorchy City Council to serve an infringement notice on the offending property owner with a monetary penalty every business day until rectification is complete after allowing a reasonable time for rectification to take place. (Magistrates can enforce monetary penalties.)

The State Government needs to ensure that councils can apply laws and that the laws have penalties which act as a effective deterrent to wilful law-breakers.