



HUON VALLEY COUNCIL

30 September 2019

Our Ref: 12/28

Your Ref:

Enquiries to: Emilio Reale

Local Government Legislation Review Project Team
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To the Project Team,

REVIEW OF TASMANIA'S LOCAL GOVERNMENT LEGISLATION FRAMEWORK

Please find enclosed a submission from the Huon Valley Council Management on the above review.

Should you have any enquiries regarding this matter these can be referred to myself on 62640319.

I trust that this advice is of assistance to you.

Yours faithfully,

**EMILIO REALE
GENERAL MANAGER**

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HUON VALLEY COUNCIL COMMENTS

Review of Tasmania's Local Government Legislation Framework

The Reform Directions Paper sets out a large number of proposed reforms which may be supported as a matter of principle. However, from an administrative perspective, these Reforms would require the proposed detail and Draft Bill to properly analyse the potential impacts arising from them.

On that basis this submission is prepared to address those issues of particular concern or where principles have not been considered in the first instance.

AREA	REFORM	SUBMISSION
PART B		
Eligibility to vote	5. Reform eligibility for the General Manger's Roll	<p>From a practical and administrative perspective the General Manager's Roll is able to be administered and verified in relation to ownership of land. That is for:</p> <ul style="list-style-type: none"> any person who resides outside of the municipal area any corporate body; and any Non-Australian Resident. <p>The issue though of an entitlement based upon "occupancy" creates substantial difficulty and uncertainty because of the inability to verify whether or not a person or corporate body indeed occupies a property and what constitutes occupancy.</p> <p>To the extent that the General Manager's Roll requires amendment it is submitted that it be limited to ownership alone as this can be verified and owners of property are ratepayers with a direct pecuniary interest in the affairs of the municipal area.</p>
	6. Reform the voting franchise to reflect 'one person, one vote' principle in any one municipality	<p>To the extent that this is an issue, a corporate body who owns property is paying rates on that property.</p> <p>If the General Manager's Roll was limited to ownership then the issue of a second vote, real or perceived, does not exist in actuality.</p>
Increasing voter participation	7. Simplify the election process for the positions of mayor and deputy mayor	<p>To the extent that this is appropriate to comment upon from an administrative perspective, the status quo has worked well within the last 19 years.</p> <p>Aside from some instances of Deputy Mayors unable to take office due to being unsuccessful as a Councillor, there have been no instances in relation to election of Mayor.</p> <p>Direct selection of Deputy Mayor would address this concern and, if the current provisions relating to a by-election for the office of Mayor remain, then would not be an issue of an unpopular Deputy Mayor assuming the role as of right in the vacancy in the office of Mayor.</p> <p>The issue of previous experience of Mayors as a Councillor does have to be raised for consideration.</p> <p>Prior to the 2014 elections, to be eligible to stand for Mayor a candidate, had <i>"...to at any time been elected or appointed as a Councillor to any council in this State for a period of at least 12 months."</i></p> <p>This provision, whilst directly related to the 2 year election cycle, ensured that a Mayor when elected had previous experience with local government, understanding the role of Mayor which they have been elected to and was in a position to perform the roles and functions effectively.</p> <p>This is no longer the case and any person may be elected as Mayor with no local government experience resulting in the potential to cause lengthy disruption in learning the role to lead the Council in the community in the presence of longer standing Councillors.</p> <p>It should also be noted here that the roles and functions of Mayor as set out in the Act and the Good Governance Guide all dictate some previous experience in the Government sphere</p> <p>Further there is a concentration in the Reform Directions on training for Councillors when the least trained Councillor who is elected to lead a Council may be the Mayor.</p> <p>A pre-qualification provision should therefore be reconsidered for the office of Mayor and Deputy Mayor.</p>
Electoral Integrity	10. Introduce caretaker provisions to reduce major policy and contractual decisions that may bind an incoming council, and avoid the inappropriate use of ratepayer resources during an election	<p>This Reform is supported however the reference to be "Election Period provisions".</p> <p>The importance is that, during an election period, the Council does not make major decisions that may bind a new Council. The Council does not remain in caretaker as such and must continue to undertake administrative decision making and normal business at all times.</p> <p>It is considered that the most appropriate approach is that each Council adopt election period policies similar to that in other jurisdictions rather than full prescriptive requirements within the Act.</p>
	11. Move administration of the General Manager's Roll from councils to the Tasmanian Electoral Commission	<p>This Reform is supported</p> <p>Practicalities of the process for updating and maintaining the roll is required as the Council holds ratepayer and ownership details within the municipal area. If the Tasmanian Electoral Commission requires access to this information then an appropriate legislative provision should be considered.</p> <p>This is also based upon the General Managers Roll being restricted to ownership and not occupancy.</p>

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	15. Align eligibility requirements to nominate as a candidate with State eligibility requirements	<p>The issue of former Council employees running for Council is raised at this point.</p> <p>There have been a number of instances over recent years where former Council employees who had been dismissed from their employment have subsequently run for Council (and Mayor) and gained office. They have then proceeded with a direct agenda to remove the General Manager who was responsible for their dismissal.</p> <p>Whilst needing to ensure democratic rights and lowest common denominator provisions are not prevalent, it is considered that there is merit in restricting the ability of a former employee of a Council to be able to run as a Councillor for a period of 5 years from cessation of employment.</p>
PART C		
Community Engagement	17. All councils will develop and adopt a community engagement strategy	<p>Of interest to note is that, prior to 2005, Section 20 required the Council to adopt and maintain policies regarding engagement with communities. This was simplified to the current section 20(2). Engagement is an important Governance Principle that has limited support within the current Act and should be strongly supported within new legislation.</p> <p>Practical application of this provision needs to be considered.</p> <p>Certainly the removal of prescription and requirements for comprehensive engagement strategy and frameworks are supported.</p> <p>The time periods for review and or replacement of an adopted community engagement strategy and framework needs to be considered.</p> <p>Development of an effective community engagement strategy and framework is time consuming and costly. It is therefore important that, like Strategic Plans, the life of a strategy or framework is for an extended period of time, say 10 years minimum or with direct linkage to the Strategic Plan.</p> <p>On that basis it would be a matter for the Councils to review on a 4 yearly cycle after an election in conjunction with the Strategic Plan.</p> <p>Councils should not have to develop new strategies and frameworks simply because of an election as this cost to the community cannot be justified and, over an election cycle, severely limits the time through which a strategy or framework can effectively be implemented.</p> <p>This section must also be considered in the context of item 19 removing the requirement for public meetings and elector polls and perhaps petitions. If these were to be removed then it would be appropriate that how the Council will deal with these requests from the community be addressed within the engagement framework.</p>
Removing prescription and giving councils autonomy and flexibility	18. Removing prescriptive consultation requirements	<p>It is acknowledged that there will always be certain matters that require prescription however the majority of matters should be considered within the engagement framework. This also allows Council to use a broad range of communication mediums, not simply required to use expensive newspaper advertising which now has limited reach to the community.</p> <p>The specific detail will only be able to be considered in the Draft Bill however the last suggestion <i>"This will be replaced with a broad transparency principle that information published in the public domain must be accessible and driven by what the community wants to see."</i> does require some clarity so as to not create an expectation of provision of information that is wholly inappropriate to make accessible and that should properly be considered under the <i>Right to Information Act 2009</i> or <i>Personal Information Protection Act 2004</i>.</p>
	19. Remove requirements for public meetings and elector polls	<p>This is supported and any provisions relating to public meetings, elector polls and petitions should be matters considered within the adopted community engagement strategy and framework.</p> <p>The requirement for Councils to hold Annual General Meetings should also be removed. Whilst an Annual General Meeting may be relevant in the corporate sphere whereby shareholders have an annual opportunity to meet with the Board, this is not the case with Local Government. Council engages its community on a regular basis, and this is proposed to be strengthened within the new legislative framework. There is no real or definable purpose for the holding of an AGM which can be dealt with by other means. This requirement should be removed and how the Annual Report is considered set out in the Community Engagement Strategy and Framework.</p>
PART D		
Good Governance	20. Legislate the eight good governance principles	<p>Whilst this is supported, exactly how these principles are legislated and function within the Act will need careful consideration in the detail of the Bill.</p>
Financial Governance	21. Set high-level financial management principles that encourage efficiency and value for money in council service delivery	<p>It is not clear how this proposed Reform is different to the current requirements within Part 7 of the <i>Local Government Act 1993</i>. If there are changes then these will need to be clearly identified and justified. It will also be important to consider that higher level or range of services may impact upon efficiency or increase budget allocations.</p>
Council Staff Accountability	24. Establish principles for all council staff that set minimum standards of behavior	<p>This Reform is not supported and has not been provided with any clear justification or reason within the Direction Paper other than the statement: <i>"The community expects council staff, as publicly funded employees, to uphold minimum standards for behavior or performance of council employees."</i> This appears to be responding to complaints raised in the submission period on the discussion paper without actually considering what applies to Council employees.</p> <p>The statement is a false premise and does not properly reflect the employment arrangements which are subject to contracts of employment, policies and codes of conduct, culture statements including a whole suite of industrial relations policies. It also pre-supposes an outcome that Council employees cannot be disciplined for inappropriate behavior which is not the case. Council employees are also subject to potential for offences under the Act and other legislation when performing their roles.</p> <p>The Reform is also not without some legal uncertainty. Whilst Council employees are appointed pursuant to the <i>Local Government Act 1993</i> they are otherwise employees subject to Commonwealth oversight and approved Enterprise Agreements and subject to contracts of employment. It is therefore unclear as to whether or not these terms can legally be applied to the employment relationship. The Reform detail recognises this issue but does not provide any satisfactory response as to whether or not the principles would have any force. This would create an expectation within the community that simply could not be met.</p> <p>As with any industrial relations policy, the General Manager has a responsibility to consult employees prior to these being enacted. There is no evidence that Council employees as a whole</p>

AREA	REFORM	SUBMISSION
		have been consulted or engaged with by the Steering Committee in relation to this proposal which relates directly to their contract of employment.
General Manager Performance	25. Prescribe minimum standards for general manager recruitment, contracts, performance management and termination	<p>Employment of the General Manager is a key role and function of the Council and, as the only position employed directly by the Council is arguably the most important decision the Council will make.</p> <p>The process requires certainty for both the Council and security for the General Manager. Unfortunately the underlying focus within the Reform Directions is on the former and not the latter. The provision of ministerial orders to provide guidance on these matters, as is currently the case, is supported and is the appropriate mechanism to provide for these matters. Prescription within the Act is not supported.</p> <p>It must be acknowledged that there is an equal employment relationship whereby there are protections provided for the General Manager.</p> <p>Stability of Council requires stability in the role of General Manager and this position should not be effected by election cycles or personality clashes with elected Mayors who are acting outside their role and authority expecting the General Manager to implement their agenda even if it is not a decision of the Council or consistent with or identified in Council's Annual Plan or budget.</p> <p>There are many instances where General Managers have been dismissed whilst on leave, without particular cause. There are other instances of General Managers who are not provided with a safe workplace and yet have responsibilities of providing a safe workplace for all Council employees. Provisions to address these circumstances where political decisions are made at the cost of the community.</p> <p>With regard to Performance Review, this needs to be done in an appropriate and legal manner overseen by an independent facilitator.</p> <p>There are concerns that Councillors are not necessarily trained in employment law requirements and seek to use the performance review process to raise complaints that ought be dealt with in other forums. In many instances raising of matters not relevant to the performance review itself would, on challenge in normal employment principles, be highly inappropriate however this is what a General Manager may be subject to.</p> <p>There must also be protections around use of the performance review process as a tool for constructive dismissals.</p> <p>Any such guidance or provisions within Ministerial Orders therefore must be appropriately balanced and legally sound consistent with employment law removing the political element.</p>
Complaints Management	26. Include principles on complaints management in legislation	<p>Inclusion of principles on complaints management in legislation is supported to provide guidance and certainty to both Council and complainants.</p> <p>The extent as to how "...stronger provisions would seek to improve the independence of internal reviews of complaints" will need to be assessed when the Draft Bill is released.</p>
	28. Introduce more flexibility for councils to easily transition from one rating approach to another, to manage rating impacts on ratepayers	<p>Arguably Councils have sufficient flexibility to change rating approaches under the current legislative regime and continuation of this with further clarity is therefore supported. As an example the categories of, or basis for, variation of rates could be more flexible in line with the adopted financial management strategies and rating policies.</p>
Transparent and accountable rate setting	29. Establish an independent rates oversight mechanism	<p>This proposed reform is wholly contrary to Reform Directions 21, 27 and 28.</p> <p>Under those Reforms the Council would develop a long-term financial management plan taking into account all relevant strategies and engagement. It would simply be a case that if a Council wishes to propose long-term increases that deviate from the plan the Council goes through the same process to amend the plan prior to the increases.</p> <p>The role of the Economic Regulator in such an exercise is also questioned. Taking into account the role of the Regulator as set out in the long title and section 10 of the <i>Economic Regulator Act 2009</i> there is no justification for involvement with Council rates when the State Government can make taxes without any reference whatsoever to long term financial plans or with any engagement with the community. The role of the Economic Regulator as proposed becomes a cost to the community without any clear benefit or outcome.</p> <p>Concerns are also raised that this is a step toward rate capping with clear reference to consumer price index within the Reform detail without any justification as to how and why this is a relevant cost factor to local government.</p> <p>As discussed above, rates and charges are to be consistent with financial plans and strategies but to be determined by a third party impacts upon the integrity of the budget estimates. Councils have to prepare rates at the beginning of the financial year to have certainty. The process as proposed simply creates uncertainty and cost for a process that is not required.</p>
Transparent and accountable fees and charges	30. Set principles or guidelines for setting fees and charges	<p>This Reform should be limited to focus on principles or guidelines and not be for the purpose of promotion of consistency as this does not properly reflect the financial plans, practices and costs of an individual Council in providing the service for which the fees and charges apply.</p>
Budget Management	31. Provide for a more autonomous and less prescriptive budget process	<p>This Reform is supported to apply to all expenses of the Council, operational, capital and asset management.</p>
Council Meetings	33. Require electronic recording of council meetings to be made publicly available	<p>This Reform is supported with consideration requested for a framework to be provided for live-streaming audio and video for those Councils that wish to do so and clearly defined provisions for dealing with the publication of defamatory and related statements.</p>
Managing Conflicts in the Exercise of Statutory Functions	35. Enhance the integrity of council decisions made when exercising statutory powers	<p>This Reform is based upon a baseless perception.</p> <p>Whilst it is up to a Council as to how it wishes to have its own developments assessed. The Local Government Act and Land Use Planning and Approvals Act are clear that the Council must consider qualified advice in making their decision. This advice is provided by professional and qualified planning officers. There is, with respect, no difference between advice provided by an employee or by way of a contract. It is both a fee for service and the emphasis is upon the qualified advice provided. It would be better for the outcomes of the reforms to be supporting</p>

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		Councils in this process and the fact of the provision of qualified advice rather than validate a baseless perception.
Independent Oversight	36. Strengthen the information gathering powers of the Director of Local Government	<p>There is an underlying compliance driven theme within many recommendations in the Reform Directions Paper.</p> <p>On the one hand the reforms are proposing to adopt a principles based legislative framework and reduced prescription. On the other hand increasing the investigatory powers and enforcement powers within the Director of Local Government are to be increased.</p> <p>It is understandable that the Minister would like sufficient powers to avoid the need for a Board of Inquiry however this is purely political and should not be the basis for bad and inappropriate law. Councils are established as independently elected bodies responsible to their communities in accordance with a set framework.</p> <p>Whilst it is agreed the Director requires sufficient powers to undertake their roles and functions, this needs to be carefully defined and specific to purposes to ensure that there is no compliance over reach.</p>
	37. Create a power for the Director of Local Government to require an undertaking from a council as a measure to address compliance issues	<p>It is agreed that providing this power to the Director assists in the better oversight and administration of Councils.</p> <p>The extent that this is then extended to individuals Councillors or the General Manager is considered to be a step too far. It is a direct interference in the individual role of a Councillor as an elected member of the community. It is also a direct interference with the employment relationship between the Council and the General Manager as well as the functions of the General Manager.</p> <p>This is another example of compliance over-reach and should not extend beyond the activities of the Council as a body corporate.</p>
	38. Establish a Monitor/Advisor role	<p>The proposal lacks detail as to the circumstances upon which the Director would require a Monitor.</p> <p>How the Monitor interacts with the role of the Councillors and the General Manager would have to be clearly defined particularly considering that Council is an elected body of the community at the first instance, not an administrative arm of the State Government to be overseen by the Director to that extent.</p> <p>The issue of costs should not simply be borne by a Council if appointed by the Director. Specific details will need to be carefully considered as part of the Draft Bill.</p> <p>Concerns are raised in relation to compliance over-reach with this provision.</p>
	39. Establish the power to appoint a Financial Controller	<p>It is considered that with proper governance and oversight procedures provided under the Act for the Director and Tasmanian Audit Office, circumstances of where a financial controller would be installed ought be rare and would be as a result of either a failure of the oversight system or a one-off event occurring.</p> <p>The reasons for installing a financial controller will need to be clearly stated in the Act, this would include the process for and justification of the appointment and the basis for this decision being made solely by the Director.</p> <p>Further the extent of the controller's powers and functions to undertake their role and the extent that these are succeeded from the General Manager and the elected Council during that period would need to be clearly defined.</p> <p>Whilst there may be extreme circumstances where a financial controller is required, this would be in similar circumstances in which a Commissioner would be required following a Board of Inquiry. A Board of Inquiry provides a complete and thorough assessment and justification for such an appointment.</p> <p>Concerns are raised in relation to compliance over-reach with this provision.</p>
Maladministration	42. Create offences for mismanagement and to address poor governance (maladministration)	<p>The offence is proposed as being broad and places a substantial and potentially unreasonable burden upon the General Manager in relation to criticisms of performing their role. To that extent many of the examples provided as possible definitions are more akin to corruption or misconduct in the context given and ought be considered under existing provisions rather than through creation of a very broad offence.</p> <p>At the end of the day the General Manager can only do what is able to be done based upon budget and resourcing provision provided to the General Manager by the Councillors. The creation of this offence is squarely aimed at the General Manager with absolutely no consequences for Councillors who may have put a General Manager in an impossible position.</p> <p>Further the General Manager has a number of responsibilities which they are unable to practically fulfil. For instance, the General Manager as the PCBU under the <i>Work Health and Safety Act 2012</i>, has a duty to ensure a safe workplace, but does not have any control or authority to deal with Councillor behavior in the Council Chamber even though it is a workplace for the purposes of that Act.</p> <p>To the extent that such an offence is required it should be limited or specific or simply, existing provisions should be clarified and relied upon.</p> <p>In the alternative, if there is to be an offence directed at maladministration and placed solely at the feet of the General Manager then there should be careful consideration in relation to offences for incompetent Councillors who are incapable of performing their roles and functions and for circumstances where Councillors, Mayors and Deputy Mayors act outside their roles and functions and interfere in the roles and functions of the General Manager.</p> <p>Whilst some of these matters may be raised as part of Code of Conduct complaints, in reality these are ineffective at addressing poor behavior of Councillors who do not understand or want to understand the limitations of their roles and functions. The review of legislative provisions must be balanced otherwise it will make the role of General Manager untenable.</p>
Performing Reporting Framework	44. Introduce a local government performance reporting framework	<p>This is not a new concept and has been the subject of a number of iterations over the years, with a key performance indicators project commencing in 2000. Current reporting is under the Consolidated Data Collection Project which is reported annually on the Local Government Division website and used by the State's Grants Commission.</p> <p>The greatest issues with performance reporting have been:</p> <ul style="list-style-type: none"> • No real defined purpose or outcome for the reporting. Whilst it is seen as a good thing to do, there is no real purpose of undertaking the exercise that benefits local government or the community. • Settling on the reporting criteria and the difference in the way that Councils interpret and report on the criteria, from both a business operation and the extent or difference of services being

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		<p>compared. Simply put it has been a case of comparing apples with oranges. The Reform Directions are based on principles and less prescription. It is not clear how performance based reporting is consistent with this and becomes prescription by its inherent nature. Unless it can be demonstrated to have clear meaning it may well become an unnecessary redirection of resources at the cost of the ratepayer.</p>
	45. Require councils to publish a compliance statement in the Annual Report	<p>Whilst there are no issues with this Reform Direction in principle this does raise some concern particularly resulting in a compliance driven culture deflecting from community outcomes. This is another prescriptive requirement and obligation on the General Manager which does not reflect the Council's requirement to comply and provide sufficient resources and budget to the General Manager to perform these functions. In those instances a General Manager may not be in a position to make such a formal attestation. Then, what are the consequences of a failure to make the attestation, or having made one, it being found that 1 compliance obligation had not been met or was overlooked? Does this result in an offence of maladministration on behalf of the General Manager? This Reform Direction is also contrary to the recommendation in 46 whereby prescription is removed from the Annual Report suggesting inconsistency of application of principles within the Reform Directions. This requirement should not be made for the Annual Report and has no clear benefit to the community of doing so. Rather it is the role and function of Councillors collectively to monitor the application of legislation etc and it is about what reporting Councillors require of the General Manager to demonstrate that this is occurring.</p>
	46. Remove prescription around Annual Report	<p>Whilst this can be supported, the current prescriptive structure at least provides some certainty for Councils and the community and should not be lost in the community engagement strategies and frameworks.</p>
PART E		
	48. Introduce the option to create Regional Councils	<p>The lack of detail makes it almost impossible to support the Reform Direction as a matter of principle. More particularly, other options are currently available within the Act to achieve this outcome through the establishment of joint authorities. This is the preferred model to remain and should be clear that it can effectively perform roles and functions necessary to achieve the outcomes as suggested for regional Councils. Regional Councils and Joint Authorities have the potential to deliver administrative and service delivery efficiencies. The ability to create Regional Councils provides a mechanism within the Act for future local government reform that would avoid the focus on amalgamation. It is unclear whether this is necessary given the other proposed reform directions. The proposal as it has been presented however lacks considerable detail as to the process for establishment, clear community support and appropriate governance arrangements, voting rights and training. The proposal on its face creates the potential for an impact of community representation and would, on current proposal of being made up of the Mayor and appointed Councillors of participating Councils, not have clear accountability to the community. The extent that the local Council will remain, its roles and functions that remain from that of the regional Council are not yet identified so therefore the detail contained within the Bill would require careful consideration. Consideration of conditions upon which a regional Council is dissolved and local Councils re-established would also require consideration in the Bill.</p>
Consistent By-laws	49. Create model by-laws for common issues, with streamlined administrative processes	<p>Currently each Council in making a By-law has to go through an exhaustive process with development of regulatory impact statements, by-law drafting and extensive community engagement. This process requires expertise and, if not available in-house, can be expensive with engagement of external lawyers. Having model by-laws can reduce this cost and resource burden and allow for consistency through Councils across the State. Model By-laws can also ensure that the provisions are clear and tested with supporting regulatory impact statements. The concept is not new and a team of council officers from across the State and representatives from the Local Government Division worked on a model by-law project in the late 2000s. A model Reserves and Recreation By-law was developed however the Division's attention was turned to other matters and the project was not completed. The Model By-law project would require dedicated resources from the Division and can be a separate project to the legislative reform. To the extent that this is proposed, advice provided by the legislative reform Project Team is that the expectation would be that model by-laws would be driven by Councils getting together rather than the Division. This may dilute the attractiveness of undertaking the project. This Reform is supported if it is done through the Local Government Division in conjunction with Councils rather than relying on a group of Councils to initiate. The cost to Councils of changing By-laws mid-stream cannot otherwise be justified. Streamlined provisions relating to the making of By-laws individually is also encouraged to reduce red-tape around regulatory impact statements and cost of development.</p>
PART F		
	51. Voluntary amalgamation	<p>The local government board undertakes the review and validation process of any amalgamation proposal and, whilst considered time and resource intensive, has demonstrated its worth with the work recently undertaken in relation to the proposed Sorell and Tasman Council amalgamations. http://www.dpac.tas.gov.au/data/assets/pdf_file/0008/397934/Local_Government_Board_Final_Report_Review_of_Voluntary_Amalgamation_and_Shared_Services_Options_Sorell_and_Tasman.pdf There should be a requirement to demonstrate engagement and clear community support. The Board process should be retained for this purpose considering the following principles:</p> <ul style="list-style-type: none"> • There should be a clear method of validating the business case for amalgamation for protection of the communities. • There should be clear and defined transition provisions between Councils. • Communities also should know what to expect within the first 5 years of the amalgamated Council to ensure that there are no surprise cost or price shocks or loss of services.