

Review of Tasmania's Local Government Legislation Framework Discussion Paper December 2018

Council Responses to Questions – February 2019 – Submission (Draft)

The following is commentary and draft responses to the questions raised in the Department of Premier and Cabinet's December 2018 Discussion Paper into the Review of Tasmania's Local Government Legislation Framework. These consolidate comments received from councillors as well as provide some context and suggestions.

This collation includes a summary which, once agreed with any amendment, will become Council's formal response. Where clarification or explanation is required, appropriate notes have been included.

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Guiding Principles

Summary

The principles guiding the Review are to deliver a legislative framework that will:

- 1 To the greatest extent that is possible and practical, be outcomes-focused;
- 2 Be flexible and robust to future structural, technological and social change;
- 3 Strike an appropriate balance between ensuring councils have sufficient operational and decision-making autonomy on the one hand, and having in place adequate checks and balances on the other;
- 4 Establish clear accountabilities and provide for efficient and effective risk-based monitoring, compliance and enforcement activities;
- 5 Be guided by best-practice regulatory, governance and legislative approaches and, where relevant and appropriate, lessons and outcomes from reviews of local government legislation in other jurisdictions; and
- 6 Be drafted and presented in a way that is logically structured and easily understood by councils, businesses, and the broader Tasmanian community.

All are considered appropriate.

Overview of the Local Government Act

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

Summary

S20 of the *Local Government Act 1993* currently provides Council with overarching powers and functions including providing for the health, safety and welfare of the community, representing the interests of the community, and to provide for the peace, order and good governance of the municipal area.

Council concurs with this general description, the interpretation of which is then determined by each Council. Since 1993 however, much has changed and local government has responded to the needs of the community, such that a more expansive description is now more appropriate with responsibilities to include the following:

- To develop and maintain the social and economic fabric of regions: strong resilient communities; communities that care about health and safety outcomes and accept responsibility for their environment;
- To bring community organisations together that have similar goals;

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- To identify local solutions for local issues and problems;
- To work closely with local community groups;
- To encourage and support community ownership of local issues;
- To encourage communities to be part of the solution for local issues;
- To work with community to build a sense of place as well as a supportive culture and to shape these things – e.g. develop a marketing brand; survey community members on what commits them to the place;
- Encouraging community development ideas and events: e.g. school holiday quality programs; festivals; arts programs;
- To seek financial support from state and federal governments for key community projects;
- Supporting economic development;
- Supporting health and welfare development; and
- Climate change issues.

Whilst it is recognised that Local Government's responsibilities are legislatively a matter for the State Government, nevertheless it is essential that if greater responsibilities are expected that appropriate funding is provided.

2 What council activities should be driven or determined by communities?

Summary

If our Nation and State are to develop effectively into the future, it will be essential that a local community's effort is efficiently directed. Local Government is the one entity that is more or less charged with this responsibility and perhaps this should be spelt out more clearly in the allocated functions and responsibilities under an amended Act.

. Subject to funding allocations there should be a minimal cap on activities driven or determined by the community with Local Government as a conduit. In a small community it's the community itself that initiates, supports, maintains numerous activities. Activities include but are not limited to the following:

- Strategic long-term planning - local priorities; community values; health and wellbeing factors of the community; priorities on the level of services in line with affordability; developing a sense of place and culture;
- Identifying big ideas and projects for future development; and
- Partnerships with community organisations e.g. dealing with waste; housing needs; health and welfare needs.

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

Summary

Consideration and recognition should be given to this aspect but not at the detriment of the small council who in many ways may be able to deliver an effective level of service with potentially greater community involvement, compared to a larger municipality, but may have greater costs simply due to remoteness. A balanced approach is required that recognises matters such as scale, local community benefit, alternatives etc.

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This approach is recognised through allocations of Financial Assistance Grants by the Grants Commission where, much like the allocations to the State, some form of equalisation approach is undertaken. Some grant funding criteria also operate on these principles, so the concept is not new.

How this is applied at a State / Local Government level is an important consideration going forward. Community engagement is essential as is long term strategic and financial planning but so too are the risks of not taking an action as the potential benefits are not realised.

As an example, Council and the State Government have identified that a new Safe Harbour located in Lady Barron is an essential infrastructure project. The cost benefit analysis is extremely positive. The cash implications short and long term on the Council as owner are an issue but for the community and business the opposite is true. Every delay adds to the overall cost. How this is balanced remains the issue to be addressed as part of the consideration.

Council Governance and Powers

4 What is vital to good governance in local government?

Summary

Fact Sheet 3 provides a good insight into the current framework and includes a range of behaviours that councillors are expected to portray

Good governance generally has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law. Good governance is responsive to the present and future needs of the organisation, exercises prudence in policy-setting and decision-making, and takes into account the best interests of all stakeholders..

Whilst this is likely to be understood within local government, whether the community understands this remains to be seen. Having these aspects reinforced in legislation would assist especially if actively reported upon. Creating a practice approach to the respective roles of Councillors (as the Board) and Executive as the implementation arm is also essential.

How this operates and is seen to operate is vital.

5 What aspects of good governance should be prescribed in a legislative framework?

Summary

The following 8 characteristics of good governance could also be prescribed:

Rule of Law

Good governance requires fair legal frameworks that are enforced by an impartial regulatory body, for the full protection of stakeholders.

Transparency

Transparency means that information should be provided in easily understandable forms and media; that it should be freely available and directly accessible to those who will be

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affected by governance policies and practices, as well as the outcomes resulting therefrom; and that any decisions taken and their enforcement are in compliance with established rules and regulations.

Responsiveness

Good governance requires that organisations and their processes are designed to serve the best interests of stakeholders within a reasonable timeframe.

Consensus Oriented

Good governance requires consultation to understand the different interests of stakeholders in order to reach a broad consensus of what is in the best interest of the entire stakeholder group and how this can be achieved in a sustainable and prudent manner.

Equity and Inclusiveness

The organisation that provides the opportunity for its stakeholders to maintain, enhance, or generally improve their well-being provides the most compelling message regarding its reason for existence and value to society.

Effectiveness and Efficiency

Good governance means that the processes implemented by the organisation to produce favourable results meet the needs of its stakeholders, while making the best use of resources – human, technological, financial, natural and environmental – at its disposal.

Accountability

Accountability is a key tenet of good governance. Who is accountable for what should be documented in policy statements. In general, an organisation is accountable to those who will be affected by its decisions or actions as well as the applicable rules of law.

Participation

Participation by both men and women, either directly or through legitimate representatives, is a key cornerstone of good governance. Participation needs to be informed and organised, including freedom of expression and assiduous concern for the best interests of the organisation and society in general.

Towards Improved Governance

Good governance is an ideal which is difficult to achieve in its totality. Governance typically involves well-intentioned people who bring their ideas, experiences, preferences and other human strengths and shortcomings to the policy-making table. Good governance is achieved through an on-going discourse that attempts to capture all of the considerations involved in assuring that stakeholder interests are addressed and reflected in policy initiatives.

Potential aspects of application of the above include the following:

- Transparency;
- Open meetings and some community engagement in workshops – off-line and on-line forums: e.g. when a particular topic requires medium to high expertise and high interest;
- Partnerships with community organisations;
- Communication via a variety of methodologies;
- Continuous improvement;
- Futuristic thinking;

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- Risk management: what do we risk if we do this? What do we risk if we do not do this?;
- Quality goal setting in line with community needs;
- Efficiency;
- Effectiveness;
- Measurement of achievement;
- Accountability and reporting;
- A strong ethical framework, equity;
- Reflect modern governance principles;
- Flexibility; and
- Integration.

6 *What statutory powers do councils need to deliver the services that communities require, or expect to receive, from councils now and into the future?*

Summary

In principal, specifying what powers a Council needs means that the entity is potentially constrained and unable to adapt without a specific Power enshrined in legislation.

To provide for the adaptability required into the future, it is suggested that a General Power of Competence be introduced into the Act. This would give councils the power to 'do anything individuals may generally do' as long as it is not prohibited by other legislation or restrictions. This would be added to the current powers that exist.

Note:

In this way the list as suggested by councillors would be automatically addressed.

7 *How are the strategic decisions of councils best made?*

Summary

In principle, strategic decisions by Council are best made with transparency, seeking community engagement for issues that have high stakeholder interest, commitment, expertise, and with Councillors and staff working together in the implementation.

Generally, there is a sliding scale of direct community engagement ranging from a high level, e.g. preparing a strategic and or community plan, to a low level for operational items. The 8 principles of good governance previously outlined provide a framework that each council could follow.

In essence, it is how a council relates formally and informally with the community that is critical e.g. a public submission process compared to a stakeholder public engagement process.

8 *What mechanisms best support strategic, operational and technical decisions and actions?*

Summary

These can be many and varied and include but are not limited to the following:

- Resource sharing where possible and practicable: material, technological, social and artistic facilities e.g. city / regional area;

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- Idea sharing with other councils;
- Sharing technological resources with councils that have similar characteristics;
- Publishing of council planning and reporting on the web page;
- LGAT forums to brainstorm ideas;
- KPIs built into council annual plans; and
- Performance data in annual reports.

Democracy and Engagement

9 What is the best way to engage Tasmanians in voting for local government?

Summary

There are a number of appropriate mechanisms including the following:

- Local councillor campaigns;
- Flyers, posters, use of social media, one to one engagement with community;
- Enabling sausage sizzles, afternoon tea etc to attract people to participate – rather than seeing this as bribery;
- Television and Internet advertising by State Government and LGAT;
- Good communication over the terms of local government by councils;
- Small forums by general and individual invitation; and
- Internet forums.

Leadership at a Commonwealth and State Level in ensuring the ultimate engagement process is carried out through compulsory voting should not be ignored and therefore should apply for local government.

Note

The last commentary has been included for consideration for inclusion in the submission as it aligns with practices at a State and Federal Level.

10 Who should be allowed to participate in local government elections?

Summary

The current voting provisions Eligibility to vote is determined by being on the General Manager's Roll or the State House of Assembly Roll. Individuals must be 18 years or older. Eligibility to be on the General Manager's Roll is based on having property or business interests within the local electorate. Where an individual has both property and business interests, they may be entitled to two votes in a local government election. It is not necessary to be an Australian citizen to be on the General Manager's Roll. The General Manager's Roll is kept by the General Manager of the council.

Council is of the view that (Option(i), (ii) or (iii) below)

Notes

The rationale for this distinction between land owner and person on the House of Assembly Roll is generally argued on equity grounds in part as a major source of a Council's revenue is through rates; which are a property tax. Hence a rate paying non-resident should be entitled to vote. A similar distinction is also drawn where one person falls into the House of Assembly Roll category and also the body corporate category.

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If one considers the State and Commonwealth system where taxes such as income and property tax are levied there is no such distinction between a person's income, taxation status, land ownership or vote.

In local government terms rates are a tax and specifically under the Act not related to services delivered. Yet all of a Council's decisions on what is done and why relate to the community with most actions also benefiting one's property in some way or other.

There would appear to be three options for Council to consider:

- (i) The status quo;*
- (ii) Remove the right to have more than one vote. i.e. a person on the electoral roll cannot also have an additional vote as a representative of a body corporate; or*
- (iii) Only have the electoral roll registrations applicable.*

11 How can local government attract skilled, diverse and representative electoral candidates?

Summary

As it currently stands it is up to the community to determine. You get the government you deserve. Much falls on existing councillors to talk openly with community and encourage discussion.

The time demands and pressure on elected members are significant as is in many instances the lack of understanding of the roles such that many potential candidates are dissuaded from nominating.

Options for an increase in remuneration may assist but for smaller Councils this would impact significantly on the Council's budget. A reduction in councillor numbers would assist this aspect but likely be opposed, notwithstanding that on a per population head basis representation would objectively still be high.

The role of a councillor is in the main as a general governance decision-maker not as an active driver of some particular passion.

One means to improve the skill base would be to devolve some power and decisions to those with the requisite skills through some sort of community structure that may be possible. *Refer to responses to Question 5 (Council Governance and Powers).* This approach is akin to that adopted by Commonwealth and State and Governments who create advisory and even decision-making Boards; membership of which is based on skills. In this way, in a de facto manner, skilled and diverse representative inputs would evolve that in one form or other would have the potential to improve local government's outputs.

12 What should be required of candidates in local government elections before, during and after elections?

Summary

Generally speaking the same requirements that currently apply should remain.

However as outlined under *responses to Question 5 (Council Governance and Powers)* a candidate could be required to provide a detailed Curriculum Vitae as well as response by way of commentary and experience related to past performance in these areas. Essentially this is the major role required of a councillor.

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13 What decisions should councils continue to be able to make during an election period?

Summary

Generally speaking, the situation should be the same as that which currently applies i.e. no caretaker provisions. This includes decisions that relate to already committed projects that are in accordance with the approved budget and emergency procedures that are unforeseen and that may arise.

Unlike State and Commonwealth Governments, local government candidates have no ability to determine a party-based platform in which to campaign on and therefore commit to new decisions. The council has already determined its budget and annual business plan which is then followed and continues on, despite there being an election in play.

14 In what ways should councillors engage with, and represent, communities in the digital age?

Summary

There may be a case to permit a Council to meet certain advertising requirements in other areas other than a local newspaper but generally speaking this should be left to the relevant Council and not be prescriptive. Following is a list of ways Councils could engage with community, some of which are already utilised by this Council:

- Open invitations to events: afternoon tea; Sausage sizzle;
- Meeting with community members at shopping centres, sporting events;
- Surveys on line, on paper, at above events;
- On line responses to issues;
- Focus groups;
- Special interest groups;
- Local newspapers;
- Special expertise groups;
- Social Media: photos, videos, graphic art;
- Flyers;
- Posters; and
- Working parties involving councillors re local big issues.

15 On what matters should councils engage with communities?

Summary

As indicated in Factsheet 4, there are a comprehensive array of formal matters that a Council is required to engage with communities on, as well as a large array of options, such that matters of council activity should be transparent to the community. Extensive consultation and participation in the preparation of a Strategic and Community Plan is perhaps the most important of a Council's undertaking.

The Council however needs to balance community engagement with its decision-making role and not abdicate its responsibility. In reality, it should be up to each Council to determine and not be prescriptive.

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16 How can community engagement be strengthened and measured?

Summary

Council engages in a range of methods including the following:

- Genuine authentic engagement;
- Positive communication;
- Realistic timelines and response times;
- Honesty;
- Education programs;
- Providing a range of opportunities for engagement – see above;
- Using a range of methodologies to enable a range of people to participate e.g. some people are not comfortable or skilled in writing or speaking in public. Use strategies that enable drawing, one-word answers, anonymity;
- Surveys: round table meetings over tea, sausage sizzles etc.

Whilst measurement may be difficult, one improvement could be for the Council to publicise in the Annual Report, a summary of the extent of formal methods undertaken.

Council Revenue and Expenditure

17 How can councils ensure transparency in funding decisions; both how it is raised and spent?

Summary

A range of techniques can be used including:

- Publishing of plans and budgets when appropriate;
- Using a variety of media to report - photos, videos, social media, small textual pieces;
- Joint working parties and committees to advise council on local issues, restricted to issues driven by a community group; and
- Information / explanation sessions.

18 How can councils determine how best to raise revenue for specific purposes?

Summary

It is essential that the rationale is described and that there is a direct connection with the activity. In local government terms, rates are a tax and specifically under the Act not related to services delivered so there should be a direct connection. Preliminary actions include:

- Consult community;
- Share information with other councils;
- Invite interested stakeholders to brainstorming sessions;
- Share/seek information with/from other councils;
- Quantify the dimensions of the purpose, test against existing priorities, take options to community if necessary, engage discussion then decision; and
- Council workshops, special and community committees, interest groups.

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19 How should councils engage communities when raising revenue?

Summary

This is addressed in responses to Question 18 above.

20 How should councils determine the services they deliver to their communities in exchange for rates and charges?

Summary

This is addressed in responses to Question 18 above.

21 How should councils decide where to make trade-offs (more or less rates vs more or less services)?

Summary

This is addressed in responses to Question 18 above. Other matters include:

- Consult with other councils and local government sources of expertise;
- Community engagement; and
- Council workshops, sometimes with community special committees involved.

Performance & Accountability

22 How can the right balance between autonomy and accountability be delivered?

Summary

It is considered that the balance is ok at the moment, but it is up to each Council to determine.

23 Who should have oversight and regulation of councils' performance and how should it occur?

Summary

Local Government is established by State Government legislation so the overarching responsibility remains with the State Government. The current provisions provide for a balanced approach with an element of direct oversight without the implementation of prescriptive requirements that apply in some states in Australia. This is seen as a positive approach and should not be altered without a compelling case. The introduction of Audit Panels is one such mechanism involving an independent assessment / advice Panel to advise, with Council remaining the overall decision-maker.

24 What mechanisms should there be to respond or intervene when a council is not performing as required?

Summary

The current provisions would seem appropriate.

25 What information should councils make available to the public and how should they be able to access it?

Summary

Information including:

- Minutes;

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- Budgets;
- Financial Plans;
- Long Term Strategies (all Forms); and
- Outcomes of Closed Meeting Decisions where appropriate.

Online is the best form of access.

26 What information would be useful to councils to drive performance improvements?

Summary

List includes the following;

- Mentoring relationships for elected members and staff;
- Operational planning;
- Performance appraisals between levels of operations;
- Discussion papers on a regular basis; and
- Financial reports that are relevant, meaningful und understandable.

Other Matters

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

Summary

No specific summary.

Notes

Discussion Paper is looking at ascertaining the most important aspect so it would seem that this should be the emphasis. Few comments that fall into this category are as follows

- Exploration of how strategic and operational can be more flexible but still remain in place: e.g. operational setting and maintaining systems for more realistic timeline

This aspect really relies on a broad understanding of roles and responsibilities with education a key element.

- Elections

~ All out - all in council elections. Small councils could suffer badly if experienced members are not there to mentor new councillors. Revert to half out every 2 years.

~ Mayor: electing a mayor who has not been an elected member before could create a weakness.

~ Each council should elect the Mayor from amongst the elected members.

This aspect is a potentially major issue. The rational for changing is clear in that any change should be aiming to ensure that elected members and the mayor are well placed, experienced, have the necessary skills and are able to perform the role over a long period of time at a high level.

It is unlikely that the change from all out - all in will alter given that it has only recently been introduced with Tasmania now brought into line with almost all other jurisdictions.

Having personally experienced all operational models

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- ~ *if a popularly elected Mayor is retained then the current methodology would seem appropriate.*
- ~ *if the Mayor is elected from all councillors around the table, as is the case in many local governments and at a commonwealth and state level, there are a range of additional benefits including spreading the workload around and ensuring that the confidence of the group is maintained.*
- Voting: Only one vote per registered voter. Remove ability for people to have more than one vote.

This is addressed previously in responses to Question 10.

Other

One additional item is having the ability through legislation to have different classes of Council, each with potentially different responsibilities and reporting requirements.

Flinders and King Islands potentially fit into this category the rationale being due to our island like nature, remoteness, lack of resources and elevated importance to the community.