



SEROC

South East Regional Organisation of Councils

Submission to the Independent Local Government Review Panel

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

1 INTRODUCTION

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


SEROC comprises 12 councils located in the South East of New South Wales, covering an area of around 48,000 square kilometres and supporting a population of approximately 183,000 people, together with the Australian Capital Territory, with approximately 368,000 people.

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

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

In this submission we cover the following matters:

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

	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
EXHIBIT	1
DATE RECEIVED	23.04.13
INQUIRY	REGIONAL

DEPARTMENT

2 A PREFERRED APPROACH TO THE PANEL'S REVIEW

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

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

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

Local government is not distinguished by the services it provides, important though they are to its working. Other bodies can, and in some cases do provide those services. It is distinguished by its basis in local democracy. The strength of local government depends therefore on its basis in local democracy and from that basis it gains its legitimacy.¹

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

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

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

- The first is to incorporate in the charter section of the Local Government Act local government's role in respect of local democracy (in passing, we note that at present the act contains no reference to democracy). A

¹ See http://www.scottishaffairs.org/backiss/pdfs/sa25/sa25_Stewart.pdf

² Both the report of the inquiry, and the background research into rating exemptions, can be found **Page 2**

possible precedent is the first leg of the purpose statement in the New Zealand Local Government Act 2002, which is "to enable democratic local decision-making and action by, and on behalf of, communities". Although that country's government is currently promoting extensive changes to its Local Government Act with the stated objective of encouraging local government to concentrate on its core activities (envisaged as local infrastructure, local public services and local regulation), it has left that element of the purpose statement unchanged.

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

S51 Local Government

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

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

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

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

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

3 RATING AND FUNDING

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

Rate peg

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

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

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

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

Crown exemptions

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

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

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

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

The Crown exemption may reflect the view that the Crown should not be bound by a lower level of government, and the religious and charitable exemptions presumably reflect some concept of community benefit that might justify exemption. But overall the rationale for these rating exemptions is unclear. The Panel considers that land should not be exempt from full rates, unless there is a clear justification.²

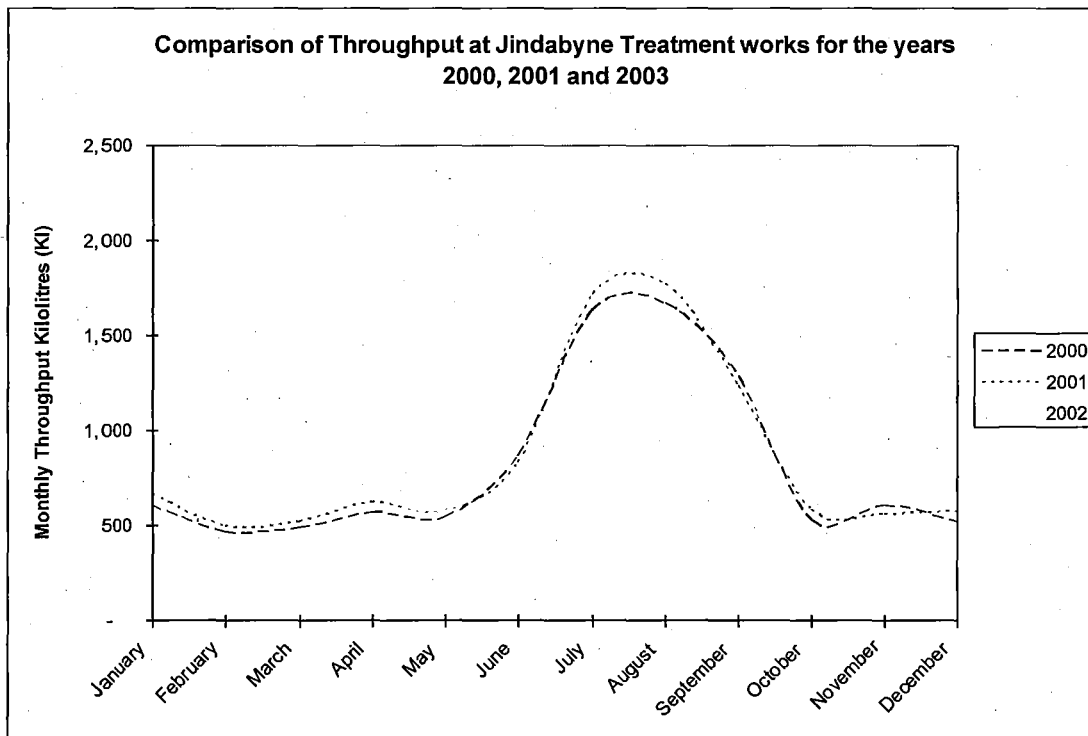
It is clear that policy understandings in this area have changed significantly since exemptions were first included in legislation. Since 2000, government-owned property in the United Kingdom is no longer exempt from the non-domestic rate. In Canada the Government makes payments in lieu of property taxes to local

² Both the report of the inquiry, and the background research into rating exemptions, can be found at:
<http://ndhadeliver.natlib.govt.nz/ArcAggregator/frameView/IE12126512/http://www.dia.govt.nz/Agency-Independent-Inquiry-into-Local-Government-Rates-Index>

governments in recognition of "the valuable benefits received from both provincial and municipal levels of government in Canada".³

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

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



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

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

³ Public Works and Government Services Canada, "Payments in Lieu of Taxes Frequently Asked Questions" <http://www.pwgsc.gc.ca/pilt/text/faq-e.html>

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

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

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

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

UCV versus ICV

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

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

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

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

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

Outside a rate pegging environment, capital values could increase a council's rate revenue raising capacity by increasing the valuation base. Within a rate pegging environment, there may be indirect advantages via

greater flexibility to maximise rate revenue through special rate variations; for example, better targeting of capacity to pay.⁴

The pensioner rebate

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

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

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

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

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

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

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

⁴ See p11 of http://www.pc.gov.au/data/assets/pdf_file/0009/65943/sub052.pdf

concession. The greater the proportion of concession-recipients in the rating base, the greater the extent that recipients themselves are in effect funding the concession.

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

Equalisation

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

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

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

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

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

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

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

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

A local government financing authority

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

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

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

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

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

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

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

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

4. GOVERNANCE

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

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

Governance of the Council itself

The principal sections of the Local Government Act dealing with the governance of the Council itself are: Section 8 – the Council's charter; Section 226 – What is the Role of the Mayor?; and Section 232 – What is the Role of a Councillor? The provisions of the charter are a mix of aspirational, strategic and operational requirements which create a relatively unfocused framework for governance. The role of the councillor varies between strategic leadership, monitoring/compliance and community advocate. The role of the Mayor, in formal terms as expressed in section 226, is essentially that of a councillor with the additional responsibilities of chairing the council and, in cases of necessity between council meetings, exercising the policy-making functions of the governing body of the council.

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

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

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

2.2.1 Relationship between the mayor and the general manager

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

And

The mayor and general manager also play an important role in ensuring that councillors and officials are acting in an ethical manner. The mayor also has a key role in the appointment of the general manager and

therefore requires a full understanding of the general manager's role and responsibilities.

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

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

There is a very real need in today's environment to strengthen the strategic role of the mayor in particular, and councillors in general, to cope with what are the major long term shifts that require a community level response if they are to be effectively managed.

Three examples from within the SEROC region will illustrate this.

Agricultural productivity

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

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

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

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

councils, communities and primary sector interest groups to find solutions for what is an extremely challenging issue.

Population ageing

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

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

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

The greater Canberra metropolitan area

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

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

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

Strategic leadership

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

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

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

The role of the mayor

A new emphasis on the strategic leadership role, coupled with the recognition of the central role councils will play in addressing long-term complex issues affecting their communities, will also raise questions about the role of the mayor within New South Wales local government.

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

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

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

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

send a strong signal to the broader community supporting the significance of the council's leadership role, especially as exemplified through the role of the mayor.

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

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

- The first is remuneration of elected members. This is a controversial area, and practice across Australia differs widely. The SEROC councils consider that remuneration should reflect the responsibility of the roles both of councillors and mayors, and the increased complexity confronting local government. It should also recognise that time commitments involved are often expensive, and simply remunerating elected members on what amounts to an honorarium basis may have the unintended effect of excluding well-qualified candidates from putting themselves forward.
- The second area, which in a sense is related to the first, is the continuing professional development of elected members. It is now accepted practice in many professions, and in other spheres such as company directorship, to require or at the very least encourage people to undertake ongoing professional development in order to ensure that their skills and knowledge remain relevant and up-to-date. The SEROC councils consider that there is very real interest within local government to enable elected members to acquire skills especially in relation to changing demands (for example the proposed use of council-owned companies discussed elsewhere in this submission).

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

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

Governance of Council activity

The present local government act is drafted on the assumption that all local government activity is inherently homogenous in terms of the appropriate operating and accountability framework that should apply. That is perhaps understandable given that, at the time the Act was drafted, the Australian

economy had only relatively recently emerged from a highly protected environment.

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

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

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

New South Wales councils have the power to form commercial structures – specifically companies – but this power has seldom been used. Section 358 of the Local Government Act permits a council to form or participate in the formation of a corporation or other entity, or acquire a controlling interest in a corporation or other entity only with the approval of the Minister. The SEROC councils understand that the present Minister has a more open attitude than his predecessor under the previous government, but that there are still concerns about post-establishment governance.

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

Features of the NZ local government model of Council controlled organisations

- The Board of Directors of a Council controlled company is required to operate in accordance with a statement of intent agreed with the council – that is, with the elected members (who will no doubt seek advice from officers).
- The statement of intent covers a wide range of issues, including the nature of the business which will be undertaken, the process the board will follow in respect of any significant acquisition or disposal, financial and non-financial performance indicators, reporting requirements, any requirements the council may have for the company to consult with the community and any other matter the parties may agree should be included.

- The relationship between the council and the company takes the form of an ongoing dialogue. It commences with a letter of expectations from the council to the Board of Directors setting out the council's expectations for the forthcoming year. The board then prepares its business plan and its statement of intent taking those expectations into account. The business plan and statement of intent are then agreed with the council and set the operating framework for the company for the forthcoming year. The relationship then continues through regular reporting (sometimes quarterly, sometimes half-yearly). In addition, there is normally a 'no surprises' expectation on both parties to keep the other informed of any significant developments.

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

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

5. STATE GOVERNMENT/LOCAL GOVERNMENT COLLABORATION

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

- The more effective use of public assets within the community.
- Collaboration in the delivery of and access to state government services.
- Cost shifting and other state interventions.

More effective use of public assets

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

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

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

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

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

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

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

Collaboration in the delivery of and access to State Government services

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

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

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

- From the government's perspective, the issue is not whether a change reduces costs within RMS but whether it reduces overall costs to

government. Underlining the viability of local councils will almost certainly have knock-on effects for government itself.

- From a "whole of society" perspective, putting in place a policy which presents a further threat to the viability of rural and regional local government, and potentially undermines employment and the ability to attract and retain skilled staff makes very little sense.

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

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

We recommend that the Independent Panel invite RMS to:

- Ensure that any decisions it takes on contracting with councils for the delivery of road maintenance services are based on a "whole of society" approach to the costs and benefits, and not solely on the impact on RMS's bottom line.
- Require councils with which it contracts to demonstrate to RMS's reasonable satisfaction that they are taking all practical means to deliver services in accordance with the principles of best value.

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

Facilitating/delivering access to services

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

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

- The community budgeting process now being trialled in England in which all public-sector spending within the locality in a given policy area is coordinated at the local level.⁵
- Co-design, a model used successfully overseas to engage local government, community organisations and end-use customers to be part

⁵ See <http://www.communities.gov.uk/news/localgovernment/1933563> for an example in the area of assistance for dysfunctional families.

of the solution to improve delivery of services and now being trialled in Victoria.⁶

- Local government's traditional advocacy role exemplified in examples such as the Golden Plains Health Forum.⁷
- Councils taking the initiative to encourage state agencies to come together, share information on their activities, and look for ways of working more closely together. Harden Shire has convened three inter-agency meetings in the past six months and has found that these are making a real difference to the effectiveness of inter-agency working.

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

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

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

⁶ See

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

⁷ See http://10thnrhc.ruralhealth.org.au/papers/docs/Reriti_Jaclyn_B6.pdf.

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

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

Another initiative, one that the SEROC councils believe could significantly improve outcomes at a community level, is the potential for councils to provide back-office services for local voluntary organisations. Too often, local NGOs in particular can find themselves in significant difficulty because they lack needed technical expertise or experience in areas such as record-keeping, compliance, meeting procedure and governance. Volunteers become involved not because they are enthusiastic about paperwork, but because they want to make a difference in their communities.

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

Cost shifting and other state interventions

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

It was highlighted in the 2003 Senate committee report 'Rates and Taxes: A Fair Share for Responsible Local Government', more commonly known as the Hawker report.⁸ and was also a theme in the findings of the recent Australian Productivity Commission inquiry into the role of local government as regulator.⁹

⁸ See http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=efpa/localgovt/report.htm.

⁹ See http://www.pc.gov.au/data/assets/pdf_file/0007/118564/local-government-volume1.pdf.

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

6. CONSOLIDATION

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

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

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

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

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

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

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

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

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

The SEROC councils consider these comments should be read as a critique of the current practice within Australian local government for attempting to establish shared services, rather than as a critique of the concept of shared services per se. Specifically, we note that regional organisations of councils, and other inter-council cooperative arrangements, although they have a number of strengths do not provide a good basis for decision making on multi-council activity. In support of this we note both the critique of RoCs in the Ernst & Young report on Strong Foundations for Sustainable Infrastructure¹⁰ and potential of the alternative of a multi-council owned company - see Reconceptualising Shared Services, a review of the experience of Bay of Plenty Local Authority Shared Services Ltd¹¹.

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

7. SEROC/ACT RELATIONSHIPS

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

The principal relationships between Canberra and New South Wales in terms of cross-border issues are managed between the ACT government and the New South Wales State government within the terms of a memorandum of understanding for regional collaboration between the two governments signed in December 2011.¹² Councils have no formal role under the MOU, although they may be represented in specific activity. As an example, the Steering Group for Land Use and Infrastructure Planning established under the MoU comprises the ACT plus the six councils within an hours drive of Canberra - Queanbeyan, Palerang, Yass Valley, Goulburn Mulwaree, Cooma-Monaro and Upper Lachlan.

¹⁰ Strong foundations for Sustainable Infrastructure, p74, accessed at <http://www.regional.gov.au/local/lgifr/files/20120622-strong-foundations.pdf>

¹¹ accessed at <http://epress.lib.uts.edu.au/journals/index.php/cjlg/article/view/2422/2653>

¹² See http://www.cmd.act.gov.au/data/assets/pdf_file/0004/265225/ACT-NSW-MoU-regional-collaboration.pdf.

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

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

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

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

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

The former approach would be a suitable umbrella for joint planning and policy development (including perhaps an extension of the Canberra spatial plan, as a non-statutory document, to include the Canberra metropolitan region) and to review and recommend options for harmonising regulatory and other provisions. Use of a joint NSW councils/ACT owned company could provide a suitable vehicle for the ownership and management of shared facilities.

The SEROC councils invite the Independent Panel to recommend that the New South Wales State government endorse the potential for joint activity between the ACT government and councils within the Canberra metropolitan area through either or both of companies limited by guarantee and limited liability companies.

