Strengthening Local Government: Options for SA Councils

Introduction

- Local government in South Australia has a record of 15 years of sustained improvements in financial performance following the Financial Sustainability Inquiry. Councils operate within a highly transparent and accountable regulatory framework.
- In December 2013 the LGA’s ‘Local Excellence Expert Panel’ (“LEEP”) produced a suite of recommendations on how to move towards the ‘Council of the Future’. Its report highlighted the challenges facing South Australia over coming decades, including further globalisation, population trends, emerging technologies, climate change, and communities increasingly expecting to be more effectively engaged in decision making.
- Since that time, the LGA has pursued, supported and/or achieved initiatives such as a State/Local Government Infrastructure Partnership, streamlining of local boundary reform processes, regionalisation and shared services projects, new planning and development legislation, considered the role of the Auditor General in auditing councils, commenced a council benchmarking program, provided resources to encourage deliberative engagement methods, produced a public lighting business case, supported new litter and nuisance laws, developed a new Code of Conduct proposal and carried out an LGA governance review.
- Local government is in the spotlight in lead-up to the March 2018 South Australian state election, with political parties and industry groups leading public discussion about rate capping, council amalgamations and the role of local government.
- With parties finalising their policy platforms ahead of the election, the sector has a window of opportunity to drive its own reform agenda. Recent public debate and interstate experiences have shown us that decisions about our future will be taken out of our hands if we don’t make bold decisions now to remain contemporary and relevant to communities and other stakeholders. No change is not an option.
- The LGA has released its State Election Agenda South Australia. Uncapped Potential, which welcome sensible discussion about reform and co-operation between councils and between spheres of government.

• We are developing a reform package that builds on our strengths and demonstrates to communities our commitment to continuous improvement and willingness to adapt to an ever-changing environment. This package is being developed a suite a reforms that can be presented to all parties as policy for State-Local Government Reform: your first 100 days in government.

• The Local Government Act 1999 (“the Act”) will be twenty years old during the next term of State government. Consultation with members on the LGA’s state election strategy has indicated strong levels of support from members for a comprehensive review of the Act.

• The LGA Board has endorsed a series of principles that should underpin local government reform—(1) sustainability, (2) efficiency, (3) local decision making, (4) sector consistency and (5) simpler regulation.

• This paper has been prepared by the Local Government Association, drawing from the work of the LEEP and further work by Professor Graham Sansom. We acknowledge Professor Sansom’s contribution and reference his work in this document.

We need your input

• This consultation will form the basis of some important decisions about the future of the sector. Input from the sector is critical to ensure that all perspectives can be heard and considered.

• It is important that these decisions be made now to put the local government sector on the front foot prior to the State Election.

• This paper presents a suite of reform options, but the doors are wide open to other reform ideas that align with the five principles of sustainability, efficiency, local decision making, sector consistency and simpler regulation.

• Now is the time to tell us what you want to change about the legislation governing how councils operate and work with their communities.

• Consultation prompts are provided throughout this document to assist you in providing your feedback. You are not required to address all of these questions, or limit your feedback to the suggested topics.

• Input is required no later than Wednesday 17 January 2018, with the intention to report to the LGA Board in January.
Reform areas

In April 2016, the Local Government Association hosted a rate capping forum, attended by approximately 150 council members and staff. The forum received a presentation from Professor Sansom on “Alternatives to rate capping- a case for a better approach”. Professor Sansom’s presentation to the Forum is available on the LGA website.2

The LGA Ordinary General Meeting held during the same week resolved that the reform ideas presented by Professor Sansom should be incorporated into the LGA’s work on local government reform. Further development of reform options has been undertaken, including further engagement with Professor Sansom. In summary, the reform options that have been explored include:

1. Re-frame current legislation to present a coherent set of provisions for sound financial management;
2. Upgrade consultation requirements to ensure effective community engagement;
3. Undertake systemic monitoring of councils’ performance in financial management, based on standardised data and indicators;
4. Give audit committees a wider and more prominent role and greater independence;
5. Transfer administration of local government audits to the Auditor General;
6. Require councils to prepare broader revenue policies that explain the reasoning behind their use of alternative funding and financing measures, including rating;
7. Mandate rigorous and consistent service reviews to ensure maximum efficiency and effectiveness, with extensive community consultation as part of the process;
8. Expand regional cooperation between councils to optimise the use of scarce resources, and to promote greater collaboration in strategic planning and with State agencies and other partners;
9. Enhancing independent oversight of financial management by councils in those instances where audit committees or auditors’ reports have identified concerns.

This Discussion Paper provides further exploration of these reform options under key reform areas of:

- Financial management, performance and reporting;
- Service levels and efficiency; and
- Engagement and participation.

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Financial management, performance and reporting

Observations about the current system

- South Australian councils on an annual basis collectively manage a budget of $2 billion and maintain infrastructure and other physical assets worth almost $23 billion.
- South Australian councils manage their finances conservatively under extreme constraints. Local government has access to only one tax, council rates, and receives an unfairly low share of State and federal government funding.
- Although SA council rates are often higher than comparable councils interstate, this is offset by generally lower levels of fees and charges in SA (compared to other states) so that overall, council revenue in SA, per capita, is actually the lowest in Australia.  
- Within this context, South Australian councils are doing a lot with a little and providing an increasing number of services to a high standard, with increased levels of financial health and sustainability.  

Rationale for change

Despite the above, the sector could benefit from a state-wide performance monitoring framework to demonstrate its efficiency. External auditors sometimes have different interpretations of financial reporting standards, leading to inconsistencies between different councils’ financial reports. 

A 2016 report Why Local Government Matters in South Australia, prepared by the University of Technology, found that members of the public wanted more transparency in councils’ patterns of expenditure.

Currently, councils must identify the performance measures they intend to use to assess the implementation of their Strategic Management Plans (SMPs) and annual business plans (ABPs). However, the Local Government Act offers no guidance on meeting this obligation. Nor is there any independent assessment of whether the council’s performance against its targets has been adequate.

Consequently the sector is facing mounting pressure to ‘do more with less’, or at the very least to demonstrate clearly that it is achieving the highest possible standards of efficiency and effectiveness. In this area of public policy, perceptions are at least as important as reality. Local government is caught between sectional interests that seek to minimize the taxes they pay and thus highlight shortcomings in councils’ financial management, and State political candidates who from time to time feel compelled to ‘do something’ in response. These have been the drivers for current proposals for “rate capping.”

Reform options

1. The LGA and State Government jointly develop a new performance monitoring, assessment and reporting framework for councils covering a wide range of measures (but probably no more than would be required to meet councils' current obligations in relation to SMPs and ABPs), so that each council’s results can be consistently reported publicly in its Annual Report.

2. Allow (or require) the Auditor-General to issue binding interpretations of accounting standards applicable to local government to ensure consistency between private sector auditors.

3. Make better use of audit committees to enhance both the quality of financial management and accountability to the community. For example:
   a) audit committees could be required to have a majority of external, independent members, including the chairperson;

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b) The chairperson could be empowered or tasked to make public statements on the committee’s work and findings.

c) Audit committees could be given additional responsibilities such as reviewing draft strategic management plans, rating practices; public consultation practices; performance monitoring, the quality of financial management, and the council’s use of public resources.

d) To contain costs and make the best use of skilled personnel, smaller rural and remote councils could share a regional audit committee.

4. Require each council to adopt a broad “revenue policy”. The Act currently requires councils to prepare a long-term financial plan, and (in the annual business plan) provide a summary of proposed sources of revenue. However, these existing requirements could be broadened and consolidated into a broader ‘revenue policy’ to set out the proposed revenue mix including rates, fees and charges, commercial activities and so on. Adoption of a revenue policy should be based on a published assessment of options and effective community consultation.⁵

5. Working towards aligning the local government sector workforce, and adopting an industry-wide industrial relations framework.

Consultation questions

A. What performance measures does your council use in its Strategic Management Plans and/or Annual Business Plans?

B. Are these measures suitable for prescription throughout the local government sector? If not, what other performance measures would you suggest?

C. Is the proposed reform in relation to the auditor-general (above) sufficient to ensure consistency across the sector?

D. What new roles (such as those canvassed above) should be assigned to audit committees and/or their chairpersons?

E. What next steps are needed to move towards an industry-wide industrial relations framework?

F. What other potential changes might help to reassure communities that councils are undertaking their responsibilities as efficiently and effectively as they could and spending ratepayers’ funds wisely?

⁵ The LGA has published a Model Revenue Policy, as an attached to its Financial Sustainability Information Paper #20 Rating and Other Funding Policy Options. http://www.lga.sa.gov.au/fsp
Service levels and efficiency

Observations about the current system

- Councils have a wide discretion about choosing which services to provide, and the levels or standards of those services. This is appropriate and necessary given the diverse needs and aspirations of different communities.
- Only a few services are legislatively required. For the majority of its services (i.e. those that are not legal obligations) each council takes account of community consultation, its own SMP; the need for long-term financial sustainability; and the resourcing that would be required for each desired service.
- The LGA’s financial sustainability advice is that each Council should have an overall service range policy and a separate service level policy for each specific service.
- One of the duties of councillors is “to keep the council’s resource allocation, expenditure and activities, and the efficiency and effectiveness of its service delivery, under review.”
- A Council’s SMPs must provide an “assessment” of the extent or levels of services that are required for the council to achieve the objectives in its SMP.
- Councils have a statutory responsibility to work with each other and with State and federal agencies to pursue shared objectives.
- Two or more councils can together establish a “regional subsidiary” to undertake joint activities, including service delivery. There are many other ways for councils to enhance efficiency by cooperating with each other in sharing service provision to their communities.

Rationale for change

The requirements above do not amount to regular, rigorous reviews of service delivery (as are required in Victoria). Nor do they require “shared services” to be considered as a default option for any service. Moreover, the requirement for community consultation on SMPs is minimal. The consultation process mandated for annual business plans and budgets is more fulsome, but there is no specific requirement for those documents to detail or review types and levels of services.

Professor Sansom has noted:

“Many councils have made significant advances in promoting regional cooperation, but the LEEP concluded … that more can and should be done to expand collaboration amongst councils – and with other agencies – in planning and service delivery. This could provide opportunities for increased efficiency and cost saving, and thus apply downward pressure on rates and/or enhance the financial sustainability of member councils.”

Reform options

6. Strengthening the Act’s provisions for service reviews and associated community engagement, with particular reference to achieving greater sector consistency and maximising efficiency and effectiveness to align with community needs and reasonable expectations.
7. Create greater legislative imperatives or policy incentives for councils to work together in the planning, delivery and funding of services and procurement of goods and services.

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7 In section 8 of the Local Government Act 1999
Consultation questions

G. How often should a council be required to review each service that it provides? Should it be required to review all services all at once (say at four-yearly intervals) or should there be a rolling program for review of each service, one-by-one, over time?

H. What should be the respective roles of the audit committee, the CEO, and the community in reviewing services and efficiency?

I. What can be done to encourage and/or require councils to co-operate more in the planning, delivery and procurement of shared services?
Engagement and participation

Public consultation and engagement

Observations about the current system

Councils are required by the Act (section 50) to have a "public consultation policy". At a minimum such a policy requires a notice to be published in a newspaper and on a website, with a period of at least 21 days for receiving submissions. Councils must follow their own public consultation policy when contemplating a variety of (often minor) decisions. The most significant legislative prescription is that a council’s draft annual business plan must be subject to a public question-and-answer session of at least an hour. However, such sessions are often not well attended by members of the public.

On the other hand, some decisions which might have as significant impact on a council’s community do not attract the same legal requirement for consultation. A council’s most important planning tool, its SMP, requires simply that “members of the public are given a reasonable opportunity to be involved in the development and review of those plans". (s122)

The LGA has recommended its members go further than statutory minimums. The LGA has produced (since 2008) two successive editions of a community engagement handbook which is widely used by councils in South Australia to undertake best practice engagement. The LGA also offers training in the use of social media to improve a council’s connection with its community.

Rationale for change

Professor Sansom has noted that the prescriptions in the Act (outlined above)

“…fall short of best practice. There is no requirement for deliberative forms of engagement such as presentation of options, interactive websites, online panels or citizen juries. In particular, it might be expected that some form of deliberative engagement would take place with respect to councils’ obligations … to assess the impact of the rates structure and policies on the community."

In 2013, the LEEP recommended that the term ‘community engagement’ with its broader overtones of collaboration and participation should replace ‘public consultation’, which infers the narrower concept of presenting a fait accompli to the community and requesting comment. The Panel noted that a new community engagement framework is needed, reflecting an era in which newspapers are read decreasingly, community members are rarely inclined to attend public meetings and there are many ways to work collaboratively with communities through social media, and other digital platforms. Many councils have already recognised this shift and have adopted engagement practices far exceeding the outdated minimum legislative requirements.

In 2016, Parliament’s Economic and Finance Committee also recommended improved consultation with communities in the setting of rates.

There is to be a new state-wide Community Engagement Charter for purposes of the Planning Development and Infrastructure Act 2016. Therefore it would be prudent to consider the extent to which community engagement in the Local Government Act 1999 could align with this new Charter.

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9 Section 50 of the Act
10 • changes to a council’s office locations or opening hours (s45);
• changes to a code of practice for public access to meetings and documents (s92);
• a draft annual business plan (s122, which also requires an annual public meeting);
• changes to the rating system (s151 and s156);
• revocation of the status of community land (s193, 194);
• adopting a management plan for community land (s197);
• leasing or licensing community land (s202);
• granting an authorisation for the partial blockage of a road (s223); and
• authorising the planting (alongside roads) of vegetation with a “significant impact” (s232).

Reform options

8. Strengthening the Act’s provisions for regular reviews of a council’s service provision, with community engagement to determine needs and reasonable expectations.
9. Introducing ‘deliberative’ community engagement throughout the planning and budgeting/rate setting process – not just consultation on a draft budget;
10. Allowing or requiring audit committees to assess the adequacy of public consultation policies and practice.

Consultation questions

J. What should be the basic legislative minimum requirements for “community engagement” as distinct from the current minimum provisions for “public consultation policies”?

K. How should the Act require councils to involve the community in deliberative engagement in budgeting and rate-setting?

L. If audit committees are to assess the adequacy of a council’s community engagement, what changes should be required in the process for recruiting and appointment of members of the audit committee? (e.g. should one or more members be required to have expertise in community engagement?)

Representation Reviews

Observations about the current system

The Local Government Act requires councils to carry out “representation reviews” approximately every 8 years or at such other times as required by the regulations. During these reviews councils must consider options relating to:

- The composition of the council, including the number of council members
- Whether or not the council should be divided into wards
- The size and boundary areas of wards if they exist

A council may also use this process to change its name, change the name of a ward or change the area of the council.

A representation options paper must be produced by a person “who is qualified to address the representation and governance issues” that may arise. Many councils do not have employees with the requisite qualifications or do not have the capacity to release a council employee to undertake this additional and substantial work. As a result, a significant number of councils engage consultants to undertake the work associated with representation reviews, including developing the representation options paper, managing the extensive advertising and consultation processes and preparing a report based on submissions. Council must then refer the report to the Electoral Commission.

The Electoral Commission, after considering the report, may either certify it as complying with the requirements or send it back to the council with reasons why it has not been certified. In recent discussions the Electoral Commission has indicated that the current drafting of the Local Government
Act does not support the type of monitoring and assistance role that the Electoral Commission has traditionally given to councils and that it is reviewing its role.

Rationale for change

Based on advice from the Electoral Commission, the LGA understands that some councils have experienced difficulty obtaining the services of appropriately qualified consultants to assist them with the workload and some councils had to undertake multiple public consultation processes as a result of community feedback and changing options. Council members also face the challenge of having to make controversial decisions on changes to the composition of a council that have the potential to affect their own positions.

Most councils required assistance from the Electoral Commission in relation to compliance with the extensive technical requirements set out in section 12 of the Local Government Act in order to enable them to achieve certification by the deadline date.

Representation reviews are an important feature of local democracy. Given that the Electoral Commission has indicated that it is reviewing the efficacy of current processes and its role in supporting councils to undertake representation reviews, the LGA considers it timely to seek feedback and further input on possible reform options.

Reform Options

11. Review and revise section 12 of the Local Government Act to simplify the technical and process issues and provide a clearer role for the Electoral Commission to monitor and assist the process
12. Ensure there is sufficient, high level expertise available to councils to assist them to carry out the requirements of representation reviews competently and at reduced cost.
13. Create a greater decision making role for Electoral Commission or another independent body.

Consultation questions

M. How could the processes for representation reviews be improved to be more efficient and effective for councils and the community?

N. Is there additional support that could be provided to councils to carry out the requirements of representation reviews?

O. What role should the Electoral Commission have in representation reviews?