LOCAL GOVERNMENT ASSOCIATION
AND
ENVIRONMENT PROTECTION AGENCY
WORKING GROUP

SHARING OF RESPONSIBILITIES UNDER
THE ENVIRONMENT PROTECTION ACT

IMPLEMENTATION MODELS

DISCUSSION PAPER

Prodirections Pty Ltd
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Attachment: Environment Protection Act,1993: Schedule 1
EXECUTIVE SUMMARY

1 This Discussion Paper constitutes the third stage of a project commissioned by the EPA/LGA Working Group investigating the sharing or responsibilities between the EPA and Local Government under the Environment Protection Act. The first two stages examined interstate models and a survey of the views of South Australian Councils. This Discussion Paper builds on this work and examines possible models for implementation to achieve a more effective sharing of responsibility.

2 The Environment Protection Agency (EPA) is South Australia’s primary environmental regulator and is responsible for the State’s main pollution control legislation, the Environment Protection Act 1993. Councils also exercise responsibilities in relation to environment protection under the Public and Environmental Health Act, the Development Act, the Local Government Act and the Environment Protection Act under delegated authority. However, the delineation of responsibilities between the EPA and Councils is not always clear.

3 The current arrangements for environmental protection matters at the local level are not working effectively. The EPA is not always meeting community demands and there is an increasing community expectation for Councils to act on environment protection matters. However Councils do not have the authority, resources or expertise to react and address environmental matters appropriately.

4 A review of arrangements in other States revealed that Local Government generally has more formalised responsibility for environment protection either by way of statutory responsibility for specific function (eg noise), or responsibility for all environment protection matters of a minor nature.

5 A recent survey (Stage 2 of this project) revealed that South Australian Councils, in the main, acknowledge that many smaller scale environmental matters are better dealt with at the local level. Some Councils are already performing such responsibilities either by default or as a matter of local policy. Notwithstanding these activities Councils are extremely cautious about formally accepting further environmental responsibilities because of the resource implications and the required technical expertise.

6 There is significant confusion regarding the demarcation of responsibilities between the EPA and Councils – the “Line in the Sand”. A key objective is to achieve clarity of roles and responsibilities and to ensure community awareness of this. The options are for responsibilities to be clarified on a function by function basis (eg noise, water), or by identifying all minor environmental matters relating to certain types or classes of premises. The latter approach is recommended with Councils being empowered to
act on all relevant environmental matters up to an agreed threshold of severity in relation to Non-licensed premises\textsuperscript{1}.

7 The retention of the status quo for legal arrangements between the EPA and Local Government, although technically possible, is not desirable outcome because the issues associated with the current process such as the slow response times to the investigation of hazards, unclear demarcation of responsibility and lack of accountability would not be resolved. It is also possible that with inaction “nobody wins”, least of all the community, and the current situation is likely to deteriorate further.

8 It is recommended that the legal basis for Councils to act on relevant environmental matters should be as the relevant authority, empowered by legislation, (as per the Development Act model) for environment protection functions associated with Non-licensed premises. This model is preferred to the delegation approach because it provides for greater local autonomy and much clearer delineation of roles and responsibilities. Currently, delegation occurs from the EPA to an officer of the Council, not to the Council as a corporate body. This arrangement has many shortcomings.

9 Councils should be empowered but not required to exercise the new environmental responsibilities under the Act.

10 In relation to the assessment of Development Applications lodged pursuant to the Development Act 1993, it is also recommended that Councils be empowered but not required to conduct environmental assessments of certain categories of development currently required to be referred to the EPA by the Development Regulations. Councils could undertake this role and eliminate the need for referral to the EPA in these situations. Such an approach would enhance the decision making process on developments with minor environmental impact at the conceptual stage and enable the EPA to minimise potential harm and improve the performance of development with significant environmental impact.

\textsuperscript{1} “Licensed Premises” are defined in Schedule 1 to the Environment Protection Act 1993 (See Attachment) as activities which require a licence from the EPA and are “prescribed activities of environmental significance”, including for example, landfills, abattoirs, foundries, timber mills—refer Attachment 1 for a current listing. “Non-licensed premises” are therefore all other premises (land uses) including households and industries not included in Schedule 1. Schedules 21 and 22 of the Development Act 1993 contain “corollary” provisions – Schedule 21 lists those activities where a Council must seek EPA advice before granting development approval. Schedule 22 lists those activities where a Council is prohibited from granting development approval unless the consent of the EPA is obtained.
The most significant impediment to the introduction of new arrangements is the resource implications for Councils. This was a very clear message from the recent survey of Councils. The State Government is unlikely to provide ongoing recurrent funding to all Councils to meet additional costs either on a “fee for service” or “grant” basis. The concept of an “environment levy” should not be dismissed as a long term funding option and linkages with the Catchment Management Levy should be investigated. However, it is concluded that the most realistic basis for a funding package is comprised of the following elements:

- A commitment by the State Government to identify and explicitly commit financial resources for the agreed level of support services to Councils and for this commitment to be transparent and accountable

- A commitment from the State Government to introduce the necessary statutory fees, charges and penalties payable to Councils to provide a realistic level of cost recovery and to consult with Councils about the level of those fees, charges and penalties.

- A commitment by the State Government to explore alternative environment protection funding options in the medium term

- An understanding by Councils in sharing of responsibilities under the Environment Protection Act that they will almost certainly incur addition net costs, but that this is unavoidable if the needs of their community are to be better served in relation to environmental matters. Put simply, it is anticipated that Councils will undertake a far more active role than has been played in this area by the EPA. Additional activity obviously has an associated cost. Ultimately Councils and their communities will need to make judgements about overall priorities.

It is proposed that a preferred model for implementation should be based on the following principles:

- Implementation is part of a long term process that will occur incrementally and in a staged manner, consistent with the capacity and readiness of Councils

- The key elements of the proposed arrangements will be underpinned by legislation

- Councils and the Environment Protection Agency cannot escape their joint involvement in local environmental activities in one form or the
other, and a “partnership approach” is the only practical way forward to meet the needs of the community in an efficient and effective manner.

13 The implementation of new arrangements will require political leadership from both spheres of government which emphasises that the community has a legitimate expectation for better environmental management and both parties have key roles in delivering better outcomes.

14 **Summary of Preferred Model**

The preferred model would contain the following elements.

- Councils would be **empowered but not required** to:
  - Act as the relevant authority for compliance activities on all minor environmental issues associated with Non-licensed premises;
  - Act as the relevant authority in the environmental assessment of development applications in certain categories currently listed in Schedule 21 of the Environment Protection Act.

- Councils would be empowered after inclusion in Schedules to the legislation that would provide for individual levels of activity in relation to environmental protection dependent upon specific hazards, skills, community concerns or resources from Council to Council.

- Councils choosing to exercise powers under the new arrangements would be empowered to charge investigation fees, impose expiation fees (and retain the revenue) and charge additional fees for environmental assessment of development applications.

- The EPA would retain residual responsibility for all environmental matters where Councils were unable to act as the relevant authority.

- The Government through the EPA would commit to a specific set of service guarantees to support Councils including the provision of tools and guidelines, training, funding support for equipment acquisition, technical advice and an agreed escalation procedure.

- The arrangements would be enshrined in legislation and supported by a formal Partnership Agreement between State and Local Government through the LGA.

15 A joint Transitional Committee should be established under legislation to oversee the staged implementation of the new arrangements and to deal with any problems as they arise. The Committee would comprise nominees of State and Local Government and would have a fixed expiry date eg two years.
The opportunity should be taken to rationalise overlapping provisions in relation to environmental matters through reviews of the Development Act, the Public and Environmental Health Act and the Environment Protection Act.

Implementation will need to be cognisant of the special factors impinging on each individual Council, especially factors that impact upon resource capacity in that Council.

A key to success in the implementation of the preferred model will be the degree to which opportunities to participate in sharing of responsibility are taken up by Councils. There will need to be extensive consultation with all Councils prior to and following any decision making with strong input from the LGA to facilitate a sound process.
SCHEMATIC OUTLINE OF PROPOSED ARRANGEMENTS

Figure 1 – Roles and Responsibilities for Environmental Enforcement
Figure 2 – Roles and Responsibilities in Development Assessment
1 INTRODUCTION

This Discussion Paper was commissioned by the Local Government Association (LGA) and Environment Protection Authority (EPA) Working Group. It constitutes the third stage of research in the project entitled “Sharing of Responsibilities under the Environment Protection Act”. The first two stages comprised a survey of South Australian Councils conducted by the Marketing Centre (the “Marketing Study”), and an overview of interstate models for the sharing of environmental responsibilities between Councils and State Government Agencies (the “Interstate Models Study”), conducted by PPK Environment and Infrastructure Pty Ltd.

The terms of reference for the preparation of this Discussion Paper were for the consultants to synthesise the outcomes of the first two studies and to conduct further research to “recommend an operational, financial and legislative model(s) that will enable responsibility for the administration of the Environment Protection Act to be shared between Local Government and the Environment Protection Authority”. In particular, the project brief sought to identify model(s) which would result in:

- “Improved efficiency and effectiveness in the administration of the Environment Protection Act with resultant community benefits;
- Simplicity, clarity and transparency of operation
- Consistency of interpretation and application” ².

The subject matter of the Discussion Paper is not restricted to dealing with issues of environmental monitoring of existing activities. Councils and the EPA are also jointly involved in the development assessment process for development applications where special environmental approval conditions may be required and this topic is discussed separately in Section 10 of this report.

Stage 3 of the project was conducted by Prodirections Pty Ltd (Michael Barry – Project Director) with assistance from Sally Bainbridge (PPK) and Janet Binder (Janet Binder Consulting).

While there has been informal contact with individual Council officers in the preparation of this Discussion Paper there has been no formal consultation with the Local Government sector and no presumptions should be drawn about any “agreement” to the proposals outlined in this paper. Rather, it is understood that the LGA and the EPA may use aspects of the Discussion Paper as a tool for extensive consultation with Councils and other stakeholders, if endorsed by the Minister and the State Executive of the LGA.

Finally, it should be noted that the consulting team deliberately chose to take a pragmatic and realistic approach to the investigation of preferred options for

² Extract from the Terms of Reference for the project
sharing of responsibility in recognition of the financial and political constraints on both spheres of government. Notwithstanding these constraints it is argued that the community could be better served in relation to environmental issues if a genuine partnership approach to service delivery can be established. It is suggested that the lack of clarity in the current arrangements is, if not untenable in the medium term, at least enormously confusing for the community.

2 CURRENT STATE AND LOCAL GOVERNMENT RESPONSIBILITIES IN ENVIRONMENT PROTECTION

2.1 The Environment Protection Agency.

The Environment Protection Agency (EPA) is South Australia’s primary environmental regulator and is responsible for the State’s main pollution control legislation, the Environment Protection Act 1993.

The Environment Protection Act 1993 delegates responsibility to the EPA for a number of specialised areas including:

- air emission control;
- wastewater control;
- solid waste management;
- hazardous waste management;
- noise control;
- contaminated sites management; and
- water quality management.

Under the powers of the Environment Protection Act (EP Act 1993) the EPA undertakes licensing, inspection, enforcement and evaluation duties. The EPA also has a significant role in development assessment, as the authority is a referral body under the Development Act 1993 for Schedule 22 and 21 ‘activities of environmental significance’ under that Act’s Regulations. Later in this paper distinction is drawn between environmental monitoring responsibilities for “licensed” versus “unlicensed” premises – examples of typical “licensed” premises include landfills, foundries, abattoirs and other land uses with potential for significant environmental impact.

2.2 Local Government

As the level of government closest to the community, Local Government also has a significant role to play in environmental protection. Councils are increasingly recognising their environmental protection responsibilities at a broader policy and planning level and are also responding to the environmental concerns of their communities. Councils currently have a role in environmental protection through their responsibilities under the Development Act 1993, the Public and Environmental Health Act 1987 and the Local Government Act 1999.
In addition some councils have voluntarily accepted delegated responsibilities under the Environmental Protection Act 1993.

- Development Act 1993.

Under the Development Act 1993 Councils are responsible for the assessment of development applications and enforcement of planning conditions. Increasingly councils are recognising the need to prevent potential environmental issues through ensuring adequate environmental assessment and inclusion of conditions at the development assessment stage. More Councils are undertaking an integrated approach to assessing developments and involving their environmental staff.

Councils refer activities of ‘environmental significance’ under Schedules 21 and 22 of the Development Act 1993 to the EPA for further environmental assessment. Independent studies have shown that the referral process, although often leading to useful advice and requirements, is overly time consuming with many responses and comments forwarded to Councils not satisfying statutory time limits.\(^3\)

- Public and Environmental Health Act 1987

Councils are required to protect the environmental health of the community. Examples of issues currently dealt with under the Public and Environmental Health Act 1993 include:

- prevention of insanitary conditions such as premises that are filthy and neglected or give rise to offensive odours;
- control of offensive activities that are a risk to health such as dust emissions;
- discharge of waste into a public place; and
- pollution of water supplies.

Often activities that pose a ‘risk to health’ may also ‘pose harm to the environment’ so there is a degree of overlap between the Public and Environmental Health Act 1987 and the Environmental Protection Act 1993.

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\(^3\) Investigations have been undertaken under the former Local Approvals Review Program (LARP) and the Development Assessment Procedures Review as commissioned by the Development Assessment Commission (DAC).
• **Local Government Act 1999**

The Local Government Act 1999 sets out the functions of a Council and includes:

Section 7(d) “to take measures to protect its area from natural and other hazards and to mitigate the effect of such hazards and,

Section 7(e) “to manage, develop, protect, restore, enhance and conserve the environment in an ecologically sustainable manner, and to improve amenity”

Further, the Act goes on to state that one of the objectives of a Council is to:

Section 8(f) “seek to facilitate sustainable development and the protection of the environment and to ensure proper balance within its community between economic, social, environmental and cultural considerations;”

Councils also have a responsibility under this Act for enforcing litter offences.

• **Environmental Protection Act 1993**

In addition to the above responsibilities, some councils (16 throughout the State) have delegated responsibility for the backyard burning provisions of the EP Act 1993 and some Council Environmental Health Officers have voluntarily accepted delegated responsibility for certain functions under the EP Act 1993.

### 2.2 Delineation of Responsibilities

The delineation of responsibilities between The Environment Protection Authority and Local Government is not always clear. For example, in the instance of waste water discharge from a residential premise, Local Government may respond to the issue utilising its existing legislative powers under the Public and Environmental Health Act 1987.

This practice of using existing legislative powers to address environmental issues was verified by the results of the recent marketing survey. The research indicated that, 84.4% of councils used other legislation (i.e., not the Environment Protection Act 1993) to police certain environmental protection issues. These were predominantly the Public and Environmental Health Act 1987, the Local Government Act 1999 and the Development Act 1993.
Most environmental protection responsibilities at a Local Government level are administered by Environmental Health Officer’s (EHO’s).

3 ISSUES WITH THE CURRENT STRUCTURE

The recent Marketing Centre Survey and the Environment, Resources and Development (ERD) Committee Enquiry into the ‘Functioning and Operation of the Environment Protection Agency’\(^4\), pointed out the following issues with the current environmental protection structure and the EPA interface with Local Government:

3.1 EPA Issues:

The research information identified the following issues that have a major impact on the Environmental Protection Authority.

- The EPA has inadequate resources to deal with the growing level of development assessment referrals and complaints.
- The EPA is not meeting community demands for complaints associated with Non-licensed and domestic premises.
- The EPA needs to have a greater focus on licensed premises and strategic issues.
- The EPA is not delivering on the administration of the EP Act 1993 or meeting increasing community expectations with regard to environmental protection.
- The EPA cannot efficiently respond to rural issues where they do not have local offices.
- There is overlap in the work carried out by the EPA and Local Government Officers and a more efficient and effective service delivery is required.
- Development assessment and application referrals are consuming significant agency resources (approximately 30-40% of the time of Authorised Officers).

3.2 Issues for Local Government:

The following issues were identified by the above research as major issues for Local Government.

- Community expectations of Local Government to be able to act on environmental protection issues are increasing.
- Local Government has limited resources to serve the increasing community demands for environmental protection.
- Rural and provincial city councils have difficulty accessing the assistance of the EPA.
- The current delineation of duties between Local Government and the EPA is unclear.

3.3 Issues for the Community and Industry:

In addition to the issues identified above there were also other issues identified by the Community and Industry that have a major impact on both the Environment Protection Authority and Local Government.

- The EPA is not satisfying the community’s expectations that reported environmental problems will be efficiently dealt with.
- The public is concerned that the EPA has not been rigorous in its enforcement of the EP Act 1993.
- The rural community is concerned about the lack of presence of the EPA in rural areas.
- There are community concerns about the difficulty of contacting EPA staff and accessing EPA advice.
- The community is often unclear on which government body is responsible for certain environmental protection matters.
- The community would like to see greater prevention of environmental issues through appropriate development assessment and is greatly concerned with the environmental impacts resulting from poor development decisions.
- Industry is concerned about poor planning decisions being the cause of environmental complaints.
• Industry is concerned with inappropriate use of EPA resources on small-scale issues and believes that Councils could undertake this role enabling the EPA to focus on more environmentally significant activities.

4 INTERSTATE MODELS STUDY

As stated in the Introduction, the first stage of the project was undertaken by PPK Environment & Infrastructure Pty Ltd which prepared a report titled ‘Local and State Government Sharing of Responsibilities in Environment Protection, Review of Interstate Approaches’. This study found that Local Government in other States generally has more responsibility for environmental protection compared with South Australia. However the degree of responsibility varied from State to State.

Local Government in Victoria and Western Australia has additional responsibilities for noise related matters whereas in Tasmania and New South Wales, Local Government is the administering authority for all environmental protection issues related to more minor environmental activities that do not require licence conditions.

In Queensland, Local Government responsibilities extend to the licensing of some environmentally relevant activities and Councils can participate in delegated functions under the Water Quality Policy.

From the recent review conducted of interstate approaches to environment protection it was established that the following mechanisms were used to confirm working relationships with Local Government:

• **Local Government Becomes the Relevant Authority under Legislation** - The NSW Protection of the Environment and Operations Act 1997 states that a local authority is the ‘appropriate regulatory authority’ in relation to non-scheduled activities in its area. In Queensland the Governor also devolves certain components of the Environmental Protection Act 1994 to Local Government to become the administering authority for 23 environmentally relevant activities.

• **The Authority Appoints Authorised Officers in Councils** - This approach is taken through the delegation of the Water Policy provisions of the EP Act in Queensland, whereby the Chief Executive of the EPA directly appoints authorised officers within Councils to act as agents of the EPA.

• **A Protocol Agreement is Established Between the Parties** - In Queensland, a protocol between the Local Government Association and Environment Protection Agency has been developed which clarifies the
environmental protection objectives and responsibilities of both parties, the EPA support to Local Government and consultation arrangements.

The review of interstate approaches also revealed the following:

- In all 3 States, Councils generally agreed that increased environmental protection powers had enabled them to respond more effectively and efficiently to local issues.

- Whilst in-kind support and technical assistance was provided by the relevant State Government agencies, there was no direct funding assistance provided to Councils in NSW, Queensland and Tasmania.

- Increases in responsibility had definitely required more resources for interstate councils. Most Councils reported that income from expiation’s or license fees (for Queensland) was not sufficient to offset the costs to local government.

- NSW had an effective implementation program that lasted over 2 years to ensure there was a smooth transition of responsibilities from the EPA to local government. This involved training and consultation workshops throughout the metropolitan and rural area, and the production of thorough guidelines for local government.

- Queensland had also established a strong working relationship with local government and has established working parties with local government representatives for a variety of issues. Queensland had also established an effective website allowing information to be shared across Councils.

The Interstate Models Study concluded by recommending the adoption of a derivation of the New South Wales and Tasmanian models in South Australia, that is:

“…PPK recommends that South Australia adopt a system similar to that of New South Wales and Tasmania. Under this model Local Government would be made the administering authority for all activities, with the exception of environmentally significant activities (scheduled activities) under the Environmental Protection Act 1993.”

The report went on to further recommend that a consultative approach be taken with Local Government to develop:

- “necessary changes to the Environment Protection Act 1993, including nuisance and strict pollution offences in the Act;
- the establishment of specialist Local Government support functions within the Environment Protection Agency;
• the establishment of a training program for Local Government officers; and
• mechanisms to enable councils to generate the necessary resource capacity to enable increased responsibilities to be undertaken.\(^5\)

While this report provided valuable input to the research conducted for this Discussion Paper on Implementation Models, it was made clear to the consulting team by the LGA/EPA Working Group that it did not necessarily either accept or reject the recommendations of that study and that the current project should further explore options for practical implementation in South Australia.

5 PILOT PROJECTS BEING UNDERTAKEN IN SOUTH AUSTRALIA

To explore opportunities for sharing environmental protection responsibilities with Local Government in South Australia, the EPA is currently undertaking trials with the Port Adelaide Enfield, Adelaide City and Adelaide Hills Councils. The trials investigate the process, opportunities and constraints influencing these councils when responding to environmental pollution issues in relation to Non-licensed premises in their area. The EPA is funding one full time officer for the Port Adelaide Enfield Council and has a fee for service arrangement with the other 2 Councils to support their resource requirements in undertaking the trials.

Whilst the trials only commenced at the beginning of November, they will provide useful information on quantifying local government resource requirements for undertaking additional duties and help to evaluate guidance information and reporting arrangements established with the EPA. The findings of the trials will assist in determining the appropriate way forward for sharing responsibilities with Local Government across the State.

An Important Note on Financial Arrangements for the Pilots:

Representatives of the EPA consulted during the conduct of this review emphasised that the temporary financial arrangements for the pilot studies were developed to enable research to be conducted on the most effective sharing of responsibilities at the practical level to inform the process of a possibly more widespread application. It was further emphasised that the financial contributions made by the EPA did not constitute a precedent for any broader application with other Councils.

Indeed it was made clear that the EPA did not have, and was unlikely to obtain, the significant additional revenue from existing sources to fund such arrangements on a recurrent basis. (Refer to Section 11 of this report for a discussion of possible financial models).

\(^5\) PPK: Review of Interstate Approaches” October 2000, Executive Summary, p iv
6  THE MARKETING STUDY

The recent survey conducted by the Marketing Centre\(^6\) on Local Government’s role under the EP Act 1993, indicated that local government acknowledges that many smaller scale environmental offenses could be more effectively dealt with at a local level. Councils acknowledge the importance of strengthening their working relationship with the EPA, particularly in rural areas where there is no local EPA presence. However councils are ‘cautious’ about agreeing to further environmental protection responsibilities due to their inability to resource additional functions without funding assistance from the State Government. Councils also commented frequently on the importance of drawing the “line in the sand” to clarify the responsibilities of Councils and the EPA.

From the further consultation with the councils that are involved in the trial programs (Port Adelaide and Enfield, Adelaide City and Adelaide Hills) this argument was made very clear, with all three councils agreeing to undertake additional functions under the EP Act 1993, but only with additional funding assistance being provided.

Councils also consider that technical support, training, and improved consultative relationships with the EPA are vital for an improved sharing of responsibilities.

In summary, it would appear that Councils in South Australia are inextricably involved, to greater or lesser extents, in “sharing of responsibility” under the Environment Protection Act and appear to agree, in most cases, that they are in the best position to take a “first response” role. However, their enthusiasm to enter any formal arrangements for responsibility sharing is understandably tempered by significant concern about resource implications and ongoing support. The management of this issue will be the key to any successful implementation of any changed arrangements.

\(^6\) The Marketing Centre: Market Research Report: October 2000 (it is understood that copies of this report have been distributed to all Councils so detailed statistical results are not re-presented in this paper)
7 SUMMARY OF OUTCOMES OF PREVIOUS RESEARCH

As previously stated, the ERD enquiry and the Market Research Study indicated that improved collaboration between the EPA and Local Government in South Australia would benefit all concerned.

Councils see major advantages in terms of community satisfaction and resolution of environmental protection situations and, in the main, are willing to be involved but there are extreme concerns about a lack of specialist skills or staff in Councils, equipment experience and the resources required.

Potential for improved collaboration identified in the research include the opportunities to:

- decrease the overlap in work undertaken by Local Government and the EPA and to improve the effective delivery of service.
- improve the response to environmental issues in rural communities where the EPA does not have the required infrastructure.
- more effectively integrate environmental considerations in the development assessment process.

8 THE “LINE IN THE SAND”

Previous sections of this report have identified the current arrangements for environmental protection in South Australia, issues and problems currently being experienced, what is happening in other States and opportunities for improved collaboration between the EPA and Local Government. All of the research has highlighted the critical importance of developing an approach to sharing of responsibilities which is clear to Councils, to the EPA, and most importantly, to the community. There are two important considerations when drawing a clear “line in the sand”:

- On what basis should responsibilities primarily be undertaken by Local Government (8.1 and 8.2 below)
- Under what circumstances should matters be referred from Councils to the EPA (Section 8.3 below)
Section 9 of this paper will then discuss the legislative options that would need to underpin any agreed transfer of responsibilities.

The options for the range of responsibilities that could be clearly delineated and transferred to Local Government are outlined below:

8.1 Single versus Multiple Environmental Protection Functions

The single approach involves transferring environmental responsibility on a function by function basis as is the case in Victoria where Local Government is responsible for residential noise issues. Alternatively the multiple approach involves transferring the whole range of environmental protection issues relevant to the EP Act 1993 to Local Government eg. noise, air, and water.

8.1.1 The Single Approach – Advantages and Disadvantages

The advantages of the single approach are that it would be less of a burden on Local Government in terms of time and resources when compared to the multiple approach. Conversely, it may be a disadvantage in terms of the ability for Councils to deal with environmental issues that are prominent in their area. For example noise control maybe particularly relevant to a Council that has large tourism, entertainment or industrial areas mixed with residential areas, but it may not be so relevant to a rural council where issues with water quality may be more relevant. These issues will vary from Council to Council across the State.

Whilst Local Government being responsible for a single function provides a clear delineation in the role of the EPA and Local Government, it does not allow sufficient flexibility at the local level to respond to all specific environmental concerns of the community.

8.1.2 The Multiple Approach – Advantages and Disadvantages

This approach would have significant effects on Councils in terms of time and resourcing, however when compared to the single approach it would provide Councils with the opportunity to deal with those issues that have particular relevance to their council area.

This approach would enable Councils to tailor responses to all community complaints regarding minor environmental offences and would allow the EPA to concentrate its efforts on more serious environmental offences and licensed premises.
8.2 Non-licensed Premises versus Licensed Premises

This approach involves the dividing of environmental responsibilities between the EPA and Local Government on a licensed versus Non-licensed premises basis. For example, in New South Wales the legislation clearly distinguishes Local Government as the relevant authority for all Non-licensed premises. A similar demarcation is made under the legislation in Tasmania and was the approach recommended by the Interstate Models Study.

Alternatively Local Government responsibilities could extend to the licensing of certain premises as is the case in Queensland. However inconsistency with licence conditions may be an issue for Councils undertaking this role.

The ERD enquiry indicated that licensing is an important source of funding for the EPA bringing in about $2.5 million per annum. Having an involvement in licensing activities would enable Local Government to receive the income of licence fees. However, licensing responsibility would only be an advantage to Local Government if the fees covered the full cost of licence administration.

8.3 The Extent of Council Responsibility

The extent of Local Government responsibility could be restricted to the initial stages of an investigation. For example, a Council could conduct the initial follow up of a complaint to help determine the severity and priority of the issue (and whether it requires referral) before referring it to the EPA. To a great extent many Local Government officers may already conduct initial complaint follow-up but this varies between Councils.

This approach would require Local Government to provide advice and notification to the EPA.

A potential issue with this approach is the possibility for inconsistency between Council Officers when responding to and prioritising issues and at which stage they ensure communication with the EPA. To facilitate consistency support mechanisms, such as guidelines and an escalation procedure, would need to be developed to indicate the level of Local Government action and EPA involvement.
required for varying scales of environmental incidents. For example, the EPA should be required to support Local Government with more serious environmental offences that require specific technical expertise.

In any event it will be vital that there is an agreed escalation procedure which enables Councils to promptly and expeditiously refer any matter to the EPA in any circumstances where it is beyond the capacity or jurisdiction of the Council to further investigate or act. This important issue will be re-visited in the discussion of required support and performance requirements for the EPA accompanying any possible sharing of responsibilities agreement.

8.4 Consultants’ Preferred Model

Based on the advantages and disadvantages of the approaches in 8.1 and 8.2, the consultants recommend that the most effective and sensible “line in the sand” would be drawn by empowering councils to act on multiple functions (that is all relevant environmental matters up to the agreed threshold of severity) for all non-licensed premises in their area, accompanied by an agreed procedure for escalation of a matter to the EPA. This arrangement would be underpinned by the EPA retaining the residual responsibility for all environment protection matters.

9 LEGAL MODELS - OPTIONS

As reported earlier, the interstate comparisons study investigated the currently used models for delineation of responsibilities between State and Local Government and favoured aspects of the “New South Wales model” where there is a mandated (legislative) delineation of responsibilities on the basis of licensed premises”. Moreover, as also reported earlier, the Marketing Study conducted in Stage 1 of this project identified an almost universal view in Councils that there needed to be a better delineation of responsibilities in South Australia, subject to resource implications for Councils being recognised.

Before identifying possible options for improvement in South Australia it is also important to discuss the option of retaining the status quo.

The following options are summarised and discussed for the purposes of this paper:

9.1 Retention of the Status Quo

The continuation of the status quo in responsibilities between the EPA and Local Government is at least a technical possibility if new arrangements are not put in place for some technical, political or financial considerations.
However, this would be a disappointing and highly undesirable outcome for all the reasons advanced in Section 3 of this paper – “Issues with the Current System”.

The current situation is best described as “no body wins”

- The EPA suffers as it acknowledges that it does not have the resources or the capacity to respond to the broad range of environmental concerns;
- Councils suffer because the current unclear lines of responsibility continue with Council staff dealing with some issues on an ad hoc basis with insufficient training and support; and
- The community suffers as the level of service is not satisfactory and existing confusion remains and is likely to increase over time.

### ADVANTAGES
- Least change option
- Avoids debate about some of the contentious funding and other issues inherent in the change options

### DISADVANTAGES
- Currently highly unsatisfactory situation prevails and is likely to become worse (“head in the sand” rather than “line in the sand”)
- For Local Government there is a significant risk that political pressure would increase to the point where Government may seek to impose an unacceptable statutory solution

### 9.2 Councils Become the Relevant Authority

The EP Act 1993 and Regulations could clearly prescribe where Local Government is the relevant authority. A good example of this approach is the NSW Protection of the Environment and Operations Act 1997 which states that a local authority is the ‘appropriate regulatory authority’ in relation to non-scheduled activities in its area. This would be very similar to the current approach under the Development Act and Regulations in South Australia where Councils are the “relevant authority”.

In Queensland the Governor also devolves certain components of the Environmental Protection Act 1994 to Local Government to become the administering authority for certain activities. In Queensland Local Government is the administering authority for 23 environmentally relevant activities under the legislation.
ADVANTAGES

- Provides some clarity in drawing the boundaries
- Sharing of responsibilities has legislative backing
- Councils have some local discretion on the nature or action taken
- Introduces the possibility of partial cost recovery for Councils

DISADVANTAGES

- Significant resource and expertise implications for Councils
- If mandated by legislation as compulsory for Councils would invite significant resistance from some Councils
- Potential for different standards across Council areas
- Possible increased liability exposure for Councils

9.3 Councils to Act as an Agent to the Authority or the Authority to Appoint Authorised Officers in Councils

Rather than act as the actual administering authority, Local Government could act as an agent for the Authority. The Authority could directly appoint authorised officers within Councils to undertake certain functions. A similar approach is taken through the delegation of the Water Policy provisions of the EP Act in Queensland, whereby the Chief Executive within the EPA directly appoints authorised officers within Councils to act as agents to the EPA.

ADVANTAGES

- Similar to the above (9.2) except that the potential for local flexibility is reduced
- More likely to produce uniform standards
- More likely to have a consistent escalation procedure between the EPA and local government.
- May allow for cross-boundary powers and the appointment of regional officers.

DISADVANTAGES

- Less discretion and power with the Council.
- Possible resource requirements associated with reporting requirements to the EPA
- Potential for inflexibility of application of EPA requirements
- Council officer is responsible to the body providing the delegation, not the Council, hence the potential for policy conflict
- Responsibility for legal challenges to actions taken under delegated authority is not clear

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8 Flexibility through the use of Regulations is a possible solution to this problem
9.4 Council Participation - Empowerment (Voluntary) or Requirement (Mandatory)

If there is to be a greater Local Government participation in the formalised sharing of responsibilities for environmental protection matters, a key consideration is whether Councils should be required by statute to exercise the specified responsibilities, or whether they should be able to do so on a “voluntary basis”. In the latter case (voluntary participation) the legislative change would empower Councils to act as the relevant Authority but not require them to do so.

The NSW and Tasmanian models have adopted the “statutory requirement” approach, whereas aspects of the Queensland model reflect the empowerment approach (capacity for Councils to apply for additional delegations of powers). In the South Australian context the advantages and disadvantages of the mandatory approach is seen as:

<table>
<thead>
<tr>
<th>ADVANTAGES</th>
<th>DISADVANTAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Provides the clear “line in the sand” and provides Statewide consistency</td>
<td>• Creates perception of “off loading responsibilities by Statute</td>
</tr>
<tr>
<td>• Promotes community understanding of responsibilities and reporting</td>
<td>• Possible resentment by Councils and deterioration in relationship with EPA</td>
</tr>
<tr>
<td></td>
<td>• Differential performance by Councils especially if funding, training and support is not adequate</td>
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</tbody>
</table>

The “empowerment” (voluntary) option would result in almost exactly the converse advantages and disadvantages. The current situation would be significantly improved because:

• Participating Councils would be more appropriately empowered to act as the relevant authority, but would be able to participate as capacity and local policy considerations allowed;
• The perception of “off-loading” of responsibilities would be much reduced under this scenario and the cooperative relationship between the EPA and Councils could well be enhanced; and
• If introduced with appropriate transitional and review mechanisms, the empowerment option could also allow for a phased approach with “fine tuning” changes to be introduced as required.

9.5 Evaluation of Options

It is self-evident that Option1 “Status Quo” is undesirable. The only thing to commend it is the rather weak proposition that it is the “least change” option. Of the remaining options, the Consultants’ prefer 9.2 where Councils become empowered as the relevant authority in relation to “certain matters”. Building on
the recommendation in Section 8 of the report these “certain matters” would be specified in the appropriate legal form to cover all environmental protection functions associated with non-licensed premises.

While the same effect could be achieved under the delegation model (9.3), it does not encompass the same degree of local autonomy deemed to be important in a true “sharing or responsibilities” arrangement.

On balance, especially when taking into account financial constraints (refer Section 11 below), the “empowerment approach” is recommended in preference to a mandated approach on the basis that it is likely to lead to a much more effective sharing of responsibilities in the medium term.

10 DEVELOPMENT ASSESSMENT

Another important interface between Councils and the EPA warrants separate attention in terms of sharing of responsibilities under the Environment Protection Act. As stated in Section 2 of the report, Councils, exercising their responsibilities under the Development Act, refer activities of ‘environmental significance’ under Schedules 21 and 22 of the Development Act 1993 to the EPA for further environmental assessment.

Council responsibilities for environmental protection in the development assessment process could remain in the initial review of the development application prior to certain activities being referred to the EPA. However the EPA is concerned about the increasing resource requirements for development assessment, the lack of pre-consideration of environmental issues within Council and in some cases the poor quality of the applications being submitted. If the existing system were to remain there is still significant opportunity for Councils to improve its initial environmental assessment of developments prior to referral to the EPA.

Alternatively Councils could be made the relevant authority for the complete development assessment of certain activities of environmental significance, such as some of those activities of a lower scale threshold listed in Schedule 21 of the Development Act 1993.9

Consistent with the spirit of the recommendations arising out of the shared exercise of the environmental compliance responsibilities outlined in Sections 8 and 9 above, it is recommended that the model of empowering Councils to become the relevant authority to conduct the environmental assessment for agreed Schedule 21 activities be adopted. Under this arrangement, the EPA

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9 It is understood that the EPA is currently reviewing the activities listed in Schedule 21 with a view to identifying those activities which could be assessed by Councils with access to appropriate tools and advice.
would provide the technical tools and guidelines to assist in such assessments. The financial implications of Councils undertaking this responsibility are canvassed in Section 11 below.

If this model were to be pursued, it would be a reasonable expectation of Local Government that the EPA would be able to improve its performance (including response times) to the other higher scale environmentally significant development applications which currently cause significant concern to Councils and applicants due to the delay in receiving EPA advice.

11 POTENTIAL FINANCIAL MODELS FOR SHARING RESPONSIBILITY

A majority of Councils in South Australia recognise that they are in the best position to exercise certain local environmental compliance activities for purely practical reasons such as accessibility and local knowledge. Furthermore, it would appear that the local communities have an expectation that “the Council” is the first port of call for “lower end” environmental nuisance and pollution matters. Finally, it appears that many Councils have taken up such responsibilities either by default (because the EPA is not able to respond) or by the deliberate policy of Council.

Significantly however, Councils are not resourced, trained or appropriately empowered to undertake these environmental responsibilities.

This constitutes the fundamental conundrum to a more effective sharing of responsibilities given the practical realities and resource constraints on both spheres of Government – there is a practical recognition that Councils are in the best position to respond locally but a strong belief that they are not resourced or trained to do so.

Identifying the resource gap between what functions Councils are currently undertaking and the possible models for responsibility to be exercised by Local Government will vary between Councils. There is significant diversity in how different Councils currently respond to environment protection issues. For example, with a water pollution discharge one Council may aim to deal with the issue under the Public and Environmental Health Act, another Council may initially follow-up the incident and then refer it to the EPA, and another may automatically refer the complainant to the EPA.

Consultation with the Port Adelaide Enfield Council, which has traditionally adopted an approach of not responding to issues considered to be the responsibility of the EPA, estimates that it would require one additional full time officer to respond to all environmental protection issues with non-licensed premises in its area. This council area has approximately 700 industrial businesses.
In the recent market survey with Local Government, 28% of respondents indicated lack of staff as being an impediment to undertaking additional functions and 29.5% stated that funding availability was the issue.

The following theoretical funding options are listed and analysed according to perceived advantages and disadvantages. As stated in the Introduction to this report, the Consulting Team has taken a pragmatic” approach to the evaluation of options based on current understanding of financial and political realities confronting both spheres of government.

11.1 Fee for Service Arrangement

Similar to the system in Queensland, a fee for service arrangement could be agreed between Local Government and the EPA, whereby Local Government is funded on an hourly rate for its assessments. In Queensland, the fee agreed is $60.00 an hour up to a limit of $180.00 per investigation.

While a fee for service arrangement is potentially attractive for Councils in off setting current and additional costs, the practical reality is that the State Government could not financially sustain a Statewide fee for service “contract” on a recurrent basis. Even if it were financially feasible, the issues associated with administrative costs in collecting fees and other compliance arrangements could be counter productive, let alone probable arguments about adequacy of the level of the fee.

11.2 Grants to Councils

Another financial model is to provide financial grants to Councils designed to offset the additional costs associated with the exercise of environmental responsibilities. This option is confronted by significant practical difficulties, including but not restricted to:

- On a recurrent basis, the quantum of funds likely to be available for distribution across the State would be so relatively small that it would be trivial at the individual Council budget level;
- A fair and equitable basis/formula for distributing funds amongst Councils would need to be developed and regularly reviewed; and
- There is likely to be an argument about both the level of the total pool of funds and the distribution method over time.

11.3 Environment Levy

Funding could be sought through an additional charge on property such as an ‘environment levy’ to support environmental protection functions. Whether the
‘environment levy’ is administered through the State or Local Government would need to be determined as would the basis of determining how much is required and how this is to be raised. Most importantly the community would have a right to expect an increase in service for the additional charge imposed. The imposition of a “green levy” is obviously attractive as it introduces a new revenue stream from the community to fund increased levels of activity in Councils and the EPA. Furthermore, “green levies” are more likely to be politically acceptable to the community than other forms of revenue raising because the funds would be dedicated to environment protection and isolated form being used for other purposes.

It is argued that the concept of a “green levy” should be retained as a long term consideration by Government. However, in the short to medium term, the political possibility of successfully introducing yet another separate levy in the context of recent experience in South Australia is extremely remote. If for no other reason, the controversy associated with the imposition of the Emergency Services Levy would rule out the immediate consideration of a new levy on households and businesses.

11.4 Catchment Management Levy

A “Green Levy” is already in existence in most parts of metropolitan Adelaide and some areas in the country through the Catchment Management levy imposed on the value of ratable land in proclaimed catchment areas.

While the catchment levy is clearly hypothecated to fund “catchment management activities”, the fact that it is an existing levy, and that it is “environment related”, provides an opportunity to support catchment related environment responsibilities under the Environment Protection Act. It is understood that the Torrens and Patawalonga Catchment Management Boards have introduced arrangements for some Councils to be funded to conduct compliance activities in relation to water pollution matters, suggesting that there may be some potential for further cooperation in this area.

While this is likely to be a highly sensitive issue, the potential for broadening the scope of the activities that could be part funded by the levy should be considered.

11.5 Provision for Partial Cost Recovery

For Enforcement

Provisions could be made within the legislation for Local Government to retain the income of infringement notices served in exercising any responsibilities under the Environment Protection Act.

An important development in providing partial cost recovery opportunities to Local Government will be in finalising Environmental Protection Policies (EPP)
that clearly detail expiable offences. A ‘Water Quality Policy’ that details water pollution offences has recently been approved. The Water Quality Policy will provide a framework for updating the expiation capacity of policies for waste, air and noise. The update of these other policies is on the agenda for the EPA. The timing of their finalisation will be crucial to providing an improved cost recovery framework for Local Government.

In addition, the capacity could be provided for Local Government to charge the identifiable polluters an administration fee for responding to environmental pollution complaints and the follow-up assessment required.

**For Development Assessment**

Should Local Government incur additional responsibilities in development assessment, such as the environmental assessment of Schedule 21 activities, Councils should have the capacity to off-set some of their administration costs through development application fee income. It is understood that a review of some statutory fees under the Development Act is currently underway and that the opportunity should be taken to ensure that the fee for environmental assessment is set at appropriate levels.

In both cases, it will be imperative for Local Government to be consulted about the level of expiation, investigation and assessment fees to ensure that the fees recovered are based on a realistic level of cost recovery. Furthermore, it is recommended that the appropriate fees and enforcement provisions should be created under the Environment Protection Act to create certainty and consistency for Councils and not the more general “cost recovery” provisions of the Local Government Act 1999 relating to fees and charges.

The advantages of introducing the capacity for Councils to collect fees associated with environmental activities are clear. A new source of revenue is created and there is a philosophical attraction to the “polluter/applicant/user pays” principle.

However, the disadvantages are equally clear. It is well recognised that the level of fees likely to be collected will not fully, or perhaps even significantly, offset the additional costs to Council. Furthermore, the administrative costs arising from the collection of fees are also significant.

**11.5 State Government Contributions - EPA Support to Councils**

Any new arrangement with Local Government, would require resources to be committed by the EPA to ensure adequate support to Councils. It is strongly suggested that if Councils are to formally assume new responsibilities (and almost certainly absorb some of the net costs), it is **absolutely imperative** that
the State Government, through the EPA make an explicit financial commitment to assist Councils in the exercise of their responsibilities.

The EPA would need to ensure sufficient resources for (at least) the following:

- Providing guidelines and proformas for enforcement and development assessment activities.

- Financial support for “start up” costs for Councils or groups of Councils for essential basic technical equipment eg noise measurement devices.

- Providing improved concise development assessment criteria for different activities that could easily be incorporated into Council Development Plans and assist Local Government to have a pro-active approach to establishing environmental conditions.

- Providing ongoing technical advice.

- Provision of performance guarantees and escalation procedures for matters beyond the capacity and jurisdiction of Councils to manage

- Providing resources and training for environmental monitoring.

- Maintaining an information network of Local Government activity.

- Consulting with Local Government on broader policy issues. **It is important to highlight that Local Government has a right to expect a greater role in policy development and priority setting when it takes greater responsibility in environment protection activities.**

- Liaising with and prompting educational institutes to ensure the availability of skilled graduates for Local Government.

It is recommended that the costs associated with these support activities be explicitly identified and documented as part of a formal agreement with Local Government.

For example the Protocol between the Local Government Association and Environment Protection Agency in Queensland clarifies the following:

- The overall objectives in environmental protection and the commitment of both parties to these objectives.

- The responsibilities of both parties with amendments to legislation, development of awareness and education programs, and communication and consultation forums between the parties.
- Responsibilities of the EPA in terms of support and training to Local Government.

- Responsibilities of Local Government with administering their responsibilities and ensuring required liaison with the EPA.

- Action plans for consultation between the two parties.

The comparable political rhetoric in contemporary intergovernment relations in South Australia is the concept of Partnership Agreements which is being promoted by the Government and supported by the Local Government Association. If agreement to a preferred model can be reached it would constitute an ideal opportunity to formulate a Partnership Agreement on Environmental Protection Matters, setting out the commitments and obligations of both parties, whilst also being underpinned by appropriate legislation. This approach is explored further in Section 12 below (“Elements of a Preferred Model”).

11.6 Summary – A “Realistic” Financial Package

Based on the financial options canvassed, it is argued that the most realistic partnership arrangement is made up of the following elements:

- A commitment by the State Government to identify and explicitly commit financial resources for the agreed level of support services and for this commitment to be transparent and accountable;

- A commitment from the State Government to introduce the necessary statutory fees and charges payable to Councils to provide a realistic level of cost recovery and to consult with Local Government about the level of those fees and charges;

- A further commitment to explore alternative funding mechanisms for environment protection matters in the medium term; and

- An understanding by Councils that when sharing responsibilities under the Environment Protection Act, they will almost certainly incur additional net costs, but that this is unavoidable if the needs of their community are to be better served in relation to environmental matters. It needs to be borne in mind that the work to be undertaken by Councils will largely be work that, in practice, is not currently being undertaken by the EPA, so that a transfer of EPA “savings” is not feasible.

- Given the uncertainties and the expected “gap” for Councils, it would be desirable to conduct a formal review of progress at an agreed point of time following the introduction of the new arrangements.
12 ELEMENTS OF A PREFERRED MODEL

12.1 Preamble

It is suggested that because of the resource and political constraints on both spheres of government that the outcome of the “Sharing of Responsibilities” Implementation Options project should be a the development of a “Preferred Model” which explicitly recognises these realities while also moving towards the objective of more effective environmental management.

The preferred model is predicated on the following propositions arising out of the matters investigated in this project:

- The implementation of a new approach to the sharing of responsibilities is part of a long term process that will occur incrementally and in a staged manner, consistent with the capacity and readiness of Councils;
- The key elements of the proposed arrangements will be underpinned by legislation; and
- Councils and the Environment Protection Agency cannot escape their joint involvement in local environmental activities in one form or the other, and a partnership approach is the only practical way forward for the best interests of the community.

12.2 Political Agreement (Partnership Agreement)

It is suggested that it is vital to create the right landscape for the discussion of sharing of responsibilities and this could be achieved by the political leaders of both spheres of government jointly announcing:

- That the community has a legitimate expectation for better environmental management practices and monitoring;
- Both spheres of government have key roles in delivering better environmental outcomes which can only be effectively delivered by working together and identifying the best team approach ie the public sector as a whole;
- Public recognition of the resource limitations on both spheres of Government;
- A broad statement of the roles of the EPA and Councils in environmental management:
• Confirmation that Local Government is in the best position to manage local environmental issues leaving aside the question of resources and expertise
• Confirmation that the State Government is in the best position to manage issues of major environmental impact and in establishing State wide policies whilst recognising that Local Government will legitimately expect to have an increased role in policy development given the activity it will be undertaking
• A commitment by the State Government to provide specialist resources to support the sharing of responsibilities;
• A recognition of the local autonomy of Councils in responding to their different community needs and expectations;
• Recognition that the LGA will need to support the process of implementation through coordination and “trouble shooting”; and
• Reference to similar historical transitions in greater Local Government participation and responsibility for traditional central government functions eg the Development Assessment process and the generally better outcomes for the community as a result.

12.3 The Preferred Model – Key Features

Based on the options canvassed in this paper, it is recommended that the preferred model for sharing of responsibilities under the Environment Protection Act be shaped on:

12.3.1 Demarcation of Responsibilities (Line in the Sand)
(Refer Sections 8, 9 and 10 for detail)

a) It is recommended that the most appropriate criterion for defining the responsibilities of Councils in environmental compliance is on the basis of Non-licensed Premises. Local Government would be formally empowered to act as the relevant authority in the investigation and compliance activities on all minor environmental issues arising from activities on Non-licensed premises eg noise, air and water; and

b) In relation to the environmental assessment of Development Applications under the Development Act, it is recommended that Councils be empowered to act as the relevant authority in the environmental assessment on certain categories of activities currently listed in Schedule 21 of the Environment Protection Act.
12.3.2 Partial Cost Recovery  
(Refer Section 11)

Councils choosing to exercise powers under the new arrangements will be also empowered to:

- Charge fees to investigate incidents and complaints wherever possible;
- Issue expiation notices for offences and retain the revenue collected from expiations; and
- Charge additional fees pursuant to the Development Act for the environmental assessment of development applications.

In all cases, such fees should be set in consultation with the Local Government Association and should be based on securing a realistic level of cost recovery for Councils. The offences and fee structures would be established under the appropriate legislative mechanism eg Regulations, Environment Protection Policies and be reviewed at an agreed point in time.

12.3.3 Participation to be Voluntary  
(Refer Section 9.4)

It is recommended that Councils be empowered but not required to exercise the responsibilities under the proposed arrangements. The EPA would retain residual responsibility for all matters under the Environment Protection Act.

It is recommended that the legislative amendments accompanying the new arrangements provide for individual Councils to be listed in a Schedule to the Environment Protection Act identifying them as Councils empowered to act as the relevant authority.

12.3.4 Legislative Backing

The relevant legislation (Environment Protection Act 1993 and Development Act 1993) should be amended to provide legislative underpinning to the new arrangements.

A schematic outline of the proposed new arrangements is included in the Executive Summary.
12.4 The Pre-conditions to Local Government Sharing of Responsibilities

Given the desirability of enlisting as much Local Government support as possible, and to ensure that participating Councils are adequately supported to exercise the responsibilities, it is recommended that the State Government would make the following commitments expressed publicly in the form of a Partnership Agreement and with underpinning legislation:

- Introduction of the necessary legislation, regulation and Environmental Protection Policies to underpin the arrangements as outlined in 12.3 above.

- Introduction of Service Guarantees in the areas of:

  - Publication and review (in consultation with Local Government) with all necessary tools for local environmental management eg codes, guidelines with an agreed schedule of publication and review;

  - Provision of ongoing training at no cost to Council officers (Environmental Health Officers, Planning staff and authorised officers);

  - Provision of necessary start up technical equipment on a Council or regional basis (eg noise measurement devices);

  - Provision of a specialised help desk facility for technical advice and support with agreed service standards; and

  - Provision of an agreed escalation procedure to the EPA (including conflict resolution and problem solving mechanisms).

- It is recommended that the explicit cost of the “Service Guarantees” be accurately estimated and included in the agreement as a formal State Government financial agreement to the Partnership Agreement.

- The agreement should record the commitment of the State Government to explore alternative funding options for environmental protection matters in the medium term.

- The agreement should also include the provisions outlined below for transition and review arrangements.

12.5 Regional Arrangements

In many rural areas of the State it may be appropriate for Councils to consider collaboration on a regional basis for the more effective delivery of services under
the proposed new arrangements. Many rural Councils already “pool resources” to share in the delivery of specialist services. Environment protection activities (both compliance and development assessment) would constitute an ideal opportunity to collaborate in this way. In addition to sharing specialist staff resources regional arrangements could also assist in securing specialised tools and equipment.

Depending on local conditions, it may be possible for rural Councils to explore building on a number of different but related environmental and inspectorial functions with the proposed new environmental protection activities to provide enhanced service delivery on a regional basis that, in all probability, would not be possible for an individual Council. Coalitions with neighbouring Councils and other organisations exercising compatible functions (including the EPA) could result in joint funding and service provision arrangements which would minimise costs for individual Councils and could result in enhanced services across a range of functions.

As part of the implementation process, it may be appropriate to consider the establishment of one or more regional demonstration trials in rural areas to test the feasibility of this concept in relation to environmental protection activities. Along quite similar lines, it is also noted that the Development (System Improvement Program) Bill recently passed by Parliament provides the opportunity for Councils to voluntarily establish (and resource) regional development assessment panels.

12.6 Implementation and Transitional Issues

The preferred model necessarily demands a staged and incremental approach to implementation with significant preparatory work to be undertaken by the EPA in close liaison with the LGA, consultation with Councils and the time lags associated with changing legislation.

However, there would appear to be some key initiatives that would assist with the implementation process, including but not limited to:

- A detailed consultation program with Councils once a preferred position has been confirmed;
- The establishment of a joint implementation group to work up the detail of all elements of the preferred model;
- Consideration of the establishment of a joint Transitional Advisory Committee under the legislation to oversee the transition and to

10 Regional arrangements for sharing of specialised functions is of course not restricted to application in rural areas – the Eastern Metropolitan Regional Health Authority (EMRHA) is an obvious example of such regional arrangements in the metropolitan area.
effectively deal with “teething problems” as they arise. The legislation creating the Transitional Committee would grant it a limited life and could also include a clause requiring it to review progress and make recommendations for the future (similar to the role of the Transitional Advisory Committee overseeing the implementation of the Emergency Services Levy legislation);

- The Transitional Advisory Committee could also be responsible for conducting a detailed analysis of the resource impacts on Councils based on the nature and quantity of the activities undertaken and make further recommendations on financial options in the light of this practical experience.

- In addition to the establishment of a “Local Government Support Unit” in the EPA, consideration should be given to funding a dedicated coordination position in the LGA for a period of time to assist with implementation issues and problems (and to promote the benefits of Council participation as appropriate).

12.7 Legislation to be Reviewed

The table below details the proposed changes (short to long term) for legislation relevant to the implementation of the proposed model:

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Requirements</th>
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<tr>
<td>Environment Protection Act 1993</td>
<td>The recognition and support of a Transitional Advisory Committee to oversees the implementation of the proposed model.</td>
</tr>
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<td></td>
<td>Requirement to recognise councils listed in a schedule to the Act as being responsible as the relevant authority for non-licensed activities.</td>
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<td></td>
<td>To have clearly expiable offences and the capacity for an administration charge under the water, air, waste and noise policies under the Act.</td>
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<tr>
<td></td>
<td>Clarification of the residual responsibility of the EPA and a mechanism to escalate incidents to the EPA</td>
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</table>
Development Act 1993 | Provision for agreed Schedule 21 activities to be assessed by Councils. Review of the development fee schedule to provide local government with further cost recovery capacity.

Local Government Act 1999 | Clarify the role and functions of Councils in relation to environmental management.

Public and Environmental Health Act 1987 | Components of this Act may need to further mirror the EP Act 1993 to provide for improved consistency in approach and expiation capacity.

**12.8 Other Considerations**

A number of other matters have been raised during the course of this review which are listed below for consideration but have not been analysed or explored in any detail:

- The potential for rationalisation of the different pieces of legislation impacting on the environment and Councils including the Environment Protection Act, the Development Act and Public and Environmental Health Act. Current reviews of those acts represent an ideal opportunity.

- The opportunity exists for issues which are problematic to a number of Councils to be more effectively dealt with on a Statewide policy, research and implementation of standards - the impact of pest birds was raised as an example.

- If Local Government is to undertake additional environmental protection responsibility it also needs assurance from the EPA that there will be improved efficiencies and performance with monitoring of licensed premises and the opportunity for Local Government input to policy decisions.

- Improvements to the detail of environmental conditions for developments also need to be made. Clearer guidelines on environmental conditions for a range of activities need to be established (like the Planning SA Technical Bulletins) and these need to be made available to local government to assist in proactive action through planning policy and development assessment decisions.

- Recognition will need to be given to specific State/Local Government relationship issues applying in individual Council areas (especially where there is an impact on the resource capacity of that Council.)
• There may need to be more detailed consideration of risk management issues for Councils formally exercising environmental responsibilities including the possibility of statutory protections
ATTACHMENT

Environment Protection Act, 1993, Schedule 1

Prescribed Activities of Environmental Significance

The electronic version of this attachment can be obtained from the following link: