Invitation for submissions

IPART invites written comment on this document and encourages all interested parties to provide submissions addressing the matters discussed.

Submissions are due by 19 February 2016.

We would prefer to receive them electronically via our online submission form <www.ipart.nsw.gov.au/Home/Consumer_Information/Lodge_a_submission>.

You can also send comments by mail to:

Local Government Regulatory Burdens Review
Independent Pricing and Regulatory Tribunal
PO Box K35,
Haymarket Post Shop  NSW  1240

Late submissions may not be accepted at the discretion of the Tribunal. Our normal practice is to make submissions publicly available on our website <www.ipart.nsw.gov.au> as soon as possible after the closing date for submissions. If you wish to view copies of submissions but do not have access to the website, you can make alternative arrangements by telephoning one of the staff members listed on the previous page.

We may choose not to publish a submission—for example, if it contains confidential or commercially sensitive information. If your submission contains information that you do not wish to be publicly disclosed, please indicate this clearly at the time of making the submission. IPART will then make every effort to protect that information, but it could be disclosed under the Government Information (Public Access) Act 2009 or the Independent Pricing and Regulatory Tribunal Act 1992, or where otherwise required by law.

If you would like further information on making a submission, IPART’s submission policy is available on our website.
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1 Executive summary

The purpose of this review is to identify inefficient, unnecessary or excessive burdens placed on local government by the State in the form of planning, reporting and compliance obligations, and to make recommendations for how these burdens can be reduced. In addressing these burdens, our draft recommendations would improve the efficiency of local government in NSW and enhance the ability of councils to focus on delivering services to their communities.

While we have identified improvements across a range of obligations, our draft recommendations in the areas of planning and the regulation of Local Water Utilities (LWUs) would bring the greatest improvements in the efficiency of councils.

The planning area was identified by stakeholders as imposing significant regulatory burdens, including the processes associated with planning approvals and reporting requirements. Our draft recommendations would improve a range of planning processes to reduce the reporting burden, and regulatory costs and delays for councils. They would also reduce costs and delays in the planning system.

Stakeholders identified the regulation of LWUs as imposing a range of excessive planning, reporting and compliance burdens. Stakeholders suggested that there is a need for broader review of this regulatory area, commenting that aspects are outdated, stifling innovation and outside the capacity of LWUs.

We consider that there is significant scope to improve LWU obligations. Our draft recommendations in this area aim to:

- tailor the regulatory framework for LWUs to reflect the capacity of each utility
- allow optimal water resource planning at the catchment level, and
- reduce the reporting and auditing burden on LWUs by taking a more efficient, targeted and ‘whole-of-government’ approach.

Our draft recommendations would make LWU regulation consistent with the regulation of other water utilities throughout the State, and address the burdens identified by stakeholders.
The extent to which local government encounters unnecessary or excessive burdens in undertaking its regulatory responsibilities is greatly influenced by how the State imposes its planning, reporting and compliance obligations. This means that improvements to the State’s approach to devolving regulatory responsibility to councils would greatly reduce these burdens.

In particular, when imposing regulatory responsibilities on local government, the State should work as a partner with local government by:

- considering the impact and cost of their regulatory requirements on councils
- adopting risk-based regulatory approaches, including:
  - supporting councils where necessary and helping them build capacity
  - tailoring requirements to reflect the different capacities of councils, and
- taking a whole-of-government approach to minimising excessive and unnecessary burdens.

**Considering the impact and cost of regulatory requirements**

Proper State consideration of the impact of regulatory proposals on councils is a key aspect of the partnership between State and local government and consistent with the principles of the Intergovernmental Agreement.1 State agencies should consider the costs and benefits of placing obligations on local government. In particular, they should ensure that new or amended obligations are efficient and effective to avoid unnecessary or excessive burdens. Further, where State agencies do not provide funding or cost recovery mechanisms for new or amended regulatory obligations, council resources can be eroded through ‘cost shifting’. This undermines local government’s ability to undertake their reporting, planning or compliance functions efficiently.

We make a range of draft recommendations to change the way the State develops regulatory proposals that devolve responsibilities to councils to ensure the impacts on councils are properly considered. This involves ensuring the requirements on councils are reasonable and improving the tools and resources used by State agencies to:

- manage the cumulative impact of regulatory proposals on councils
- harness existing central websites and registers to consolidate council reporting and sharing of council data between State agencies, and
- assess new proposals to collect data from councils.

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1 Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships, signed on 8 April 2013.
These tools and resources include a proposed Register of local government reporting, planning and compliance obligations, the NSW ICT Strategy and Information Asset Registers, and a ‘gateway’ framework for assessing new State agency proposals for reporting from councils.

Our draft recommendations to deregulate certain fees charged by councils would allow councils to recover the costs of statutory approvals and inspections, lessening the financial impact on councils.

**Risk-based regulatory approaches**

To reduce regulatory burdens on councils, the State should replace ‘one-size-fits-all’ approaches to councils with risk-based regulatory approaches. Agencies should minimise the level of prescription and regulatory oversight. This level may vary depending on the level of risk inherent in the regulatory function and the capacity of all councils, or individual councils: for example, the State should impose less regulatory oversight for certain low risk functions and for councils that have demonstrated capacity.

Where it is appropriate, a ‘lighter touch’ regulatory oversight would mean a reduction in reporting requirements (in frequency, scope or even the need to report at all), greater freedom in the way councils undertake their functions, and a reduction in the need to seek approvals from the State. It may also involve tailoring requirements to better suit the different circumstances of rural and regional councils.

Where councils undertake a regulatory function, they should be given the authority and responsibility to do this without unnecessary State involvement. For new regulatory functions, and for councils without the necessary resources, the State needs to provide greater support to assist councils in undertaking their assigned functions and to build their capacity. This support may include IT systems, training, dedicated staff resources to provide guidance and expertise, and standardised forms or toolkits.

We recommend that the NSW Government take risk-based approaches to reduce the burdens identified by stakeholders. An example is with regulating Local Water Utilities, where we recommend that the NSW Government adopt a less prescriptive regulatory approach for utilities with sufficient capacity, while maintaining support for utilities that need it.

In the area of Crown reserve reporting and management, our draft recommendations would reduce regulatory oversight, recognising the capability of local government in this area. Our recommendations complement the NSW Government’s Crown land reviews and would reduce the reporting burden on councils.
We also recommend the State take a risk-based approach for council grants applications and administration. Many councils have robust internal controls, comprehensive external audit requirements and well-developed risk mitigation strategies that should be recognised in the level of risk control the State applies to councils’ grant acquittals. This would lessen the administrative costs associated with grants.

For council tendering, we recommend the State further devolve authority and responsibility to lower-risk councils by increasing the threshold for using tendering processes, and allowing councils to delegate the acceptance of tenders to General Managers. This would lessen the administrative costs of tendering.

In some functional areas the State needs to provide greater support to councils. By way of example, for the relatively new council function of processing heavy vehicle access applications and undertaking route assessments, we have found that because some councils lack the competency to undertake this function, Roads and Maritime Services (RMS) should provide greater support to develop the competency and skills within councils. This would ensure that councils establish processes to undertake this function in a consistent, effective and efficient manner.

**Whole-of-government approach to minimising burdens**

Councils provide a wide range of services in fulfilling their regulatory functions. They do this under 67 different Acts that are administered by 27 different State agencies. To minimise the burdens on local government, State agencies cannot operate in isolation. They must consider how their function-specific planning, reporting and compliance requirements are related to and interact with those of other agencies.

In taking this perspective, State agencies should:

- coordinate and streamline reporting requirements to remove unnecessary reporting and duplication in reporting to other agencies
- align the timing of reporting requirements with council reporting cycles
- make greater use of automated data collection, and
- make greater use of data portals to provide access across government and minimise the incidence of duplicative reporting and data collection.

Elements of the existing NSW Government’s ICT Strategy and Information Asset Registers can be used to help State agencies achieve these outcomes. We recommend that the Office of Local Government (OLG) take the role of gatekeeper for reporting to State agencies on new and amended requirements imposed on councils. Under this ‘gateway’ framework, an agency would access a central repository or portal to consider the information that is already available and should use the relevant information instead of separately requesting the
same or similar information. OLG would also apply a cost benefit methodology to proposals for new or amended reporting to prevent excessive or duplicative requirements.

We also make draft recommendations across the range of functional areas to facilitate a whole-of-government approach to reduce duplication, streamline regulatory obligations and remove unnecessary reporting burdens. Examples include:

- Planning – removing duplication in reporting by implementing the Australian Bureau of Statistics (ABS) and Victorian Government central collection and data sharing model in NSW.
- Water and sewerage – removing duplication of data reported to the Department of Primary Industries Water, the Environment Protection Authority and NSW Health.
- Administration and governance – removing duplication in reporting, such as in councils’ General Purpose Financial Statements.
- Animal control – automating the collection of data concerning animals in pounds by allowing data to be uploaded directly from pound systems into the new central Register of Companion Animals.

1.1 Context of the review

This review is part of the NSW Government’s broader local government reform program that commenced in 2011. Over the past few years, the NSW Government has commissioned reviews into:

- options for changes to local government governance models, structural arrangements and boundaries to improve the strength and effectiveness of local government – undertaken by the Independent Local Government Review Panel (ILGRP)\(^2\)

- the statutory framework for local government, the Local Government Act 1993 and City of Sydney Act 1988 – undertaken by the Local Government Acts Taskforce (LG Acts Taskforce)\(^3\) and


Executive summary

The NSW Government is currently implementing reforms recommended by the ILGRP and LG Acts Taskforce. One recommendation of the ILGRP was to commission IPART to undertake this whole-of-government review of the regulatory, compliance and reporting burdens on councils.\(^4\)

Chapter 3 discusses the context of this review in more detail.

1.2 What has IPART been asked to do?

The full Terms of Reference for this review are at Appendix A. Under these Terms of Reference, IPART is to:

- identify inefficient or unnecessary planning, reporting and compliance obligations imposed on councils by the NSW Government through legislation, policies or other means
- develop options to improve the efficiency of local government by reducing or streamlining planning, reporting and compliance burdens, and
- collect evidence to establish the impacts on councils of reporting and compliance burdens, and to substantiate recommendations for reform.

The Terms of Reference also require us to estimate the savings associated with our recommendations. We will include these savings estimates in our Final Report.

1.3 How IPART has approached the task

We have focused our draft recommendations on the planning, reporting and compliance obligations placed on councils by State Government legislation and policies that are specific to councils. Consequently, several issues raised by councils that apply to any member of the community, government organisation or business undertaking a particular function, are deemed out of scope. These issues are discussed in Appendix C.

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We identified the regulatory burdens imposed on local government through a process of consultation, including submissions to our Issues Paper, council questionnaire and workshops. We also consulted with relevant NSW Government agencies regarding the burdens councils had raised, and sought feedback on the proposed solutions.

Appendix B includes a number of burdens identified by stakeholders for which we have not made a draft recommendation. We are open to considering these issues further, and invite comment on whether a recommendation should be made in the final report for these items.

Chapter 4 discusses in more detail how we have undertaken this review.

1.4 How and when you can provide input to this review

We invite all interested parties to make written submissions in response to this Draft Report. We will also hold a public hearing on 8 February 2016. All interested parties are invited to attend and participate in the public hearing.

In general, we seek your response on the draft recommendations listed in Chapter 2, including any information on:

- the impacts of the suggested reforms, such as the costs or benefits, and
- any alternative ideas for reforms to the planning, reporting and compliance obligations imposed on local government which have been identified as inefficient, unnecessary or excessive.

Submissions may also comment on the issues included in Appendix B, as outlined above, as well as issues considered out of scope in Appendix C, or on any other issues stakeholders consider relevant to the review.

Submissions are due by **19 February 2016**. In accordance with IPART’s public submission policy, late submissions may not be accepted at the discretion of the Tribunal. All submissions will be posted online as soon as possible after the closing date for submissions. Further information on how to make a submission can be found on page iii, at the front of this report.

After we have considered all the information and views expressed at the public hearing and in submissions, we will submit our Final Report to the NSW Government.

The following table sets out our timetable for this review.
1 Executive summary

Table 1.1 Key dates for the review

<table>
<thead>
<tr>
<th>Task</th>
<th>Timeframe</th>
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<tbody>
<tr>
<td>Public hearing</td>
<td>8 February 2016</td>
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<tr>
<td>Stakeholder submissions due</td>
<td>19 February 2016</td>
</tr>
<tr>
<td>Final Report to Minister for Local Government</td>
<td>22 April 2016</td>
</tr>
</tbody>
</table>

Note: These dates are indicative and may be subject to change.

1.5 What does the rest of this Draft Report cover?

The rest of this report explains the context and approach for our review as well as our draft recommendations and findings. The report is structured as follows:

- **Chapter 2** lists our draft recommendations and findings.
- **Chapter 3** discusses our review in the wider context of local government reform and other reviews and reforms relevant to councils’ regulatory responsibilities, as well as best practice regulatory principles.
- **Chapter 4** defines the scope of our review, explains what makes a regulatory obligation a burden, sets out the process we have undertaken to identify the inefficient, unnecessary and excessive regulatory obligations imposed on councils, and develops options for reform.
- **Chapter 5** discusses ways to address the systemic issues that are central to the State’s regulation of local government.
- **Chapters 6-12** discuss specific issues and proposed solutions in the council functional areas of:
  - Water and sewerage
  - Planning
  - Administration and governance
  - Building and construction
  - Public land and infrastructure
  - Animal control
  - Community order.
- **Appendices A-D** set out:
  - The Terms of Reference
  - Other issues raised as burdens
  - Out of scope issues
  - Consultation.
Our draft recommendations and findings are set out below, along with the page number where each is discussed in the report.

**Systemic issues**

**Draft Recommendations**

1. That the Department of Premier and Cabinet (DPC) revise the *NSW Guide to Better Regulation* to include requirements for State agencies developing regulations involving regulatory or other responsibilities for local government, as part of the regulation-making process, to:
   - consider whether a regulatory proposal involves responsibilities for local government
   - clearly identify and delineate State and local government responsibilities
   - consider the costs and benefits of regulatory options on local government
   - assess the capacity and capability of local government to administer and implement the proposed responsibilities, including consideration of adequate cost recovery mechanisms for local government
   - take a coordinated, whole-of-government approach to developing the regulatory proposal
   - collaborate with local government to inform development of the regulatory proposal
   - if establishing a jointly provided service or function, reach agreement with local government as to the objectives, design, standards and shared funding arrangements, and
   - develop an implementation and compliance plan.

2. That the NSW Government maintain a *Register of local government reporting, planning and compliance obligations* that should be used by State agencies in the regulation-making process to manage the volume of regulatory requirements imposed on councils and to avoid creating unnecessary or duplicative requirements.
3. That the NSW Government remove restrictions on fees for statutory approvals and inspections to allow for the recovery of efficient costs, subject to monitoring and benchmarking.  

4. Where fees continue to be set by statute, that the relevant NSW Government agency reviews the level of the fees every 3-5 years and amends the relevant legislation to allow these fees to increase annually in line with CPI or an index of fee-related costs.  

5. That if statutory fees are capped below cost recovery to ensure affordability or for other policy reasons, then the NSW Government should reimburse councils for the shortfall in efficient costs.  

6. That the Department of Premier and Cabinet amend the *Good Practice Guide to Grant Administration*, to:  
   - recognise Local Government as separate from non-government organisations  
   - remove acquittal requirements for untied grants  
   - explicitly address ongoing maintenance and renewal costs when funding new capital projects  
   - require Agencies to rely on existing council reporting to assess financial stability and management performance of councils  
   - lengthen acquittal periods for ongoing grant programs to four years, and use Memorandum of Understanding (MOU) arrangements, rather than requiring councils to reapply annually, and  
   - provide for a streamlined acquittal process for grants of less than $20,000 in total, examples of streamlining include:  
     - not requiring further external financial audit  
     - using risk-based controls and requirements, and  
     - confining performance measurement to outcomes consistent with the purpose of the grant.  

7. That the Department of Finance, Services and Innovation use the NSW ICT Strategy and Information Asset Registers to:  
   - provide a central website to consolidate Local Government reporting portals, searchable data sets, reports and publications  
   - facilitate council use of the central website, and  
   - facilitate sharing of Local Government data and information between State Government agencies.
8 That the Office of Local Government introduce a “gateway” framework, using a cost-benefit methodology, to assess new State agency proposals for reporting and data collection from Local Government.

9 That the Department of Planning and Environment, including through the Office of Local Government, review public notice print media requirements in the *Local Government Act 1993*, the *Local Government (General) Regulation 2005*, the *Environmental Planning and Assessment Act 1979*, and the *Environmental Planning and Assessment Regulation 2000* and, where the cost to councils of using print media exceeds the benefit to the community, remove print media requirements and allow online advertising, mail-outs and other forms of communication as alternatives.

**Water and Sewerage**

**Draft Recommendations**

10 That the Department of Primary Industries Water (DPI Water) undertake central water planning for Local Water Utilities (LWUs) to ensure that water supply and demand options are considered in the context of catchments, replacing the water planning LWUs currently undertake individually through Integrated Water Cycle Management Strategies.

11 That the NSW Government enable LWUs with sufficient capacity to be regulated under the *Water Industry Competition Act 2006* as an alternative to their current regulation under the Best-Practice Management of Water Supply and Sewerage Framework and section 60 of the *Local Government Act 1993*.

12 That DPI Water amend the *Best-Practice Management of Water Supply and Sewerage Guidelines* to:

- streamline the NSW Performance Monitoring System to ensure each performance measure reported is:
  - linked to a clear regulatory objective
  - used by either most Local Water Utilities (LWUs) or DPI Water for compliance or meaningful comparative purposes
  - not in excess of the performance measures required under the National Water Initiative, and
  - not duplicating information reported to other State agencies.

- reduce the number of performance measures and/or the frequency of reporting for small LWUs with fewer than 10,000 connections

- align trade waste reporting with other performance reporting, on a financial year basis, subject to consultation with LWUs, LGNSW and the Water Directorate, and
implement a risk-based auditing regime for LWU wanting to pay a dividend to their council’s general fund. 61

13 That NSW Health determine a standardised service report template to be used by technicians undertaking quarterly servicing of aerated wastewater treatment systems, in consultation with councils. 65

14 That the Local Government (General) Regulation 2005 be amended to require service reports to be provided to councils using the template determined by NSW Health as a standard condition of approval to operate an aerated wastewater treatment system. 65

Planning

Draft Recommendations

15 That the Department of Planning and Environment (DPE): 75

– Implement a data sharing model with the Australian Bureau of Statistics in relation to building approvals in NSW. 75

– Introduce a consolidated data request of councils for the purposes of the Local Development Performance Monitoring (LDPM), Housing Monitor, State Environmental Planning Policy (Affordable Rental Housing) 2009 (Affordable Rental Housing) and State Environmental Planning Policy No 1 – Development Standards (SEPP 1 variations). 75

– Fund an upgrade of councils’ software systems to automate the collection of data from councils for the purposes of the LDPM, Housing Monitor, Affordable Rental Housing and SEPP 1 variations. 75

– Publish the data collected from councils on Affordable Rental Housing and SEPP 1 variations data. 75

– Seek agreement with the Land & Environment Court to obtain appeal data directly from the Court. 75

– Remove the administrative requirement for councils to report to DPE on political donations or gifts under section 147 of the Environmental Planning & Assessment Act 1979. 75

16 That the Environmental Planning and Assessment Act 1979 be amended to enable zoning and development standards information under section 149(2) of the Environmental Planning and Assessment Act 1979 to be provided through the NSW Planning Portal. 86

17 That the Environmental Planning and Assessment Regulation 2000 be amended to specify the information that can be provided by councils in accordance with section 149(5) of the Environmental Planning & Assessment Act 1979. 87
18 That DPE amend the NSW Planning Portal to provide for online:
  - payment of fees and charges by applicants and for the Planning Reform Fund fee to then be automatically directed to DPE
  - zoning and development standards information under section 149(2) of the Environmental Planning & Assessment Act 1979
  - joint applications for development approvals and construction certificates, and
  - information under section 149(5) of the Environmental Planning & Assessment Act 1979 to be accessible via a link to council websites.

19 That DPE manage referrals to State agencies through a ‘one-stop shop’ in relation to:
  - planning proposals (LEPs)
  - development applications (DAs), and
  - integrated development assessments (IDAs).

20 That DPE develop suites of standardised development consent conditions and streamline conditions that require consultant reports or subsequent approvals, in consultation with councils, State government agencies and other key stakeholders.

Administration and governance

Draft Recommendations

21 That the NSW Government streamline the reporting requirements for the Integrated Planning and Reporting (IP&R) framework in the revised Local Government Act.

22 Ahead of the next IP&R cycle (2016), that the Office of Local Government:
  - provide councils with a common set of performance indicators to measure performance within the IP&R framework
  - conduct state-wide community satisfaction surveys and release the results to allow comparisons between councils and benchmarking
  - provide guidance to councils on the form and content of the End of Term Report and its relationship to local councils’ Annual Reports
  - clarify for councils the purpose, form and content of the State of the Environment report and clarify its relationship to the End of Term Report
  - work with the Office of Environment and Heritage, the NSW Environment Protection Authority and other relevant agencies to develop performance indicators for councils to use, and
23 That the Office of Local Government remove requirements for councils to report more in the General Purpose Financial Statements than is required by the Australian accounting standards, issued by the Australian Accounting Standards Board, except for requirements which are unique and high value to local government such as Note 21 and Special Schedule 7.

24 That clause 163(2) of the *Local Government (General) Regulation 2005* be amended to allow the Office of Local Government to determine the councils for which the threshold for formal tendering would be increased to $250,000, with this threshold to be reviewed every five years.

25 That section 377(1)(i) of the *Local Government Act 1993* be amended to allow the Council to delegate the acceptance of tenders.

26 That the Department of Planning and Environment, through the Office of Local Government, review the requirements in the *Local Government Act 1993* for Ministerial approvals; those that are not justified on the basis of corruption prevention, probity or protecting the interests of the State be removed.

27 That the Office of Local Government introduce guidelines that specify maximum response times for different categories of approvals.

28 That the Department of Planning and Environment, through the Office of Local Government, review all approvals required under section 68 of the *Local Government Act 1993* in order to:
   - determine the activities for which a separate local council approval under section 68 is necessary
   - revise the regulatory frameworks within NSW legislation to remove duplication
   - place as many approval requirements as possible in specialist legislation, and
   - where appropriate, enable mutual recognition of approvals issued by another council.

29 That the *Local Government Act 1993* be amended to transfer current requirements relating to the length of time for temporary appointments under section 351(2) to the *Local Government (General) Regulation 2005* or the relevant awards.

30 Extend the maximum periods of temporary employment from 12 months to four years within any continuous period of five years, similar to Rule 10 of the *Government Sector Employment Rules 2014*.
31 That section 31 of the Public Interest Disclosures Act 1994 be amended to require councils to report on public interest disclosures in their annual reports and remove the requirement for an annual public interest disclosures report to be provided to the Minister for Local Government. 124

32 That section 125 of the Government Information (Public Access) Act 2009 be amended to allow councils to lodge annual reports of their obligations under the Act within five months after the end of each reporting year. 126

33 That the Office of Local Government assist the Information and Privacy Commission to circulate to councils information related to the Government Information (Public Access) Act 2009. 126

Draft Findings

1 That the principles and processes outlined in ICAC’s Guidelines for managing risk in direct negotiations are best practice standards which can be applied where a lack of competition exists in a Local Government Area. 111

Building and construction

Draft Recommendations

34 That the Building Professionals Board include information on travel charges for certification services in regional areas when developing an indicative fee schedule. 135

35 That the Building Professionals Board or the proposed Office of Building Regulation (in consultation with Department of Planning and Environment, Fire & Rescue NSW and local government) design the new online system for submitting annual fire safety statements (AFSS) to allow councils to identify buildings in their area that require an AFSS, and where follow up or enforcement action is required. 137

36 That the Environmental Planning and Assessment Regulation 2000 be amended to clarify what constitutes a ‘significant fire safety issue’. 140

37 That section 121ZD of the Environmental Planning and Assessment Act 1979 be amended to allow councils to delegate authority to the General Manager to consider a report by the Fire Brigade, make a determination and issue an order, rather than having the report considered at the next council meeting. 140
Draft Findings

2 The draft recommendations of the *Independent Review of the Building Professionals Act 2005* (Lambert Building Review), if supported by the NSW Government, would:

- Substantially improve the funding and ability of councils to effectively undertake their compliance functions in relation to unauthorised building work and refer certifier complaints to the Building Professionals Board. 131
- Introduce more effective disincentives (for example, penalties) for unauthorised building work. 131
- Institute a system of electronic lodgement of certificates and documentation from private certifiers to councils in a standardised form. This should reduce current record management burdens on councils, which would allow the information to be used to inform building regulation policy development and better targeting of council and state resources in building regulation. 131
- Reduce the frequency of accreditation renewals from annually to every three to five years. 132
- Create a new category of regional certifier to reduce the accreditation burden on councils and increase the number of certifiers in the regions. 132

3 That under the *Local Government Act 1993* councils can set their fees for certification services to allow for full cost recovery. These fees can include travel costs. 135

4 That the online Building Manual, proposed in the e-building initiative draft recommendation of the Lambert Building Review, would remove the current burden on councils of collecting and maintaining records of annual fire safety statements. 137

Public land and infrastructure

Draft Recommendations

38 That the NSW Government transfer Crown reserves with local interests to councils, as recommended by the NSW Crown Lands Management Review and piloted through the Local Land Program Pilot. 143

39 Consistent with its response to the Crown Lands Legislation White Paper, that the NSW Government ensure that Crown reserves managed by councils are subject to *Local Government Act 1993* requirements in relation to:

- Ministerial approval of licences and leases, and 143
- reporting. 143
40 That the NSW Government streamline the statutory process for closing Crown roads, including the arrangements for advertising road closure applications. 146

41 That the NSW Government reduce the backlog of Crown road closure applications to eliminate the current waiting period for applications to be processed. 146

42 That the NSW Government streamline the provisions of the *Local Government Act 1993* relating to plans of management for community land to align public notice and consultation with councils’ community engagement for Integrated Planning and Reporting purposes. 149

43 That Roads and Maritime Services provide greater support for councils to develop the competency to conduct route access assessments and process heavy vehicle applications. This support should be focused on developing the competency and skills within councils to perform these regulatory functions. 151

44 That the *Impounding Act 1993* be amended to treat caravans and advertising trailers in the same way as boat trailers when considering whether they are unattended for the purposes of the Act. 153

**Animal control**

**Draft Recommendations**

45 That the Office of Local Government’s redesign and modernisation of the central *Register of Companion Animals* includes the following functionality: 157

– online registration, accessible via mobile devices anywhere 157

– a one-step registration process, undertaken at the time of microchipping and identifying an animal 157

– the ability for owners to update change of ownership, change of address and other personal details online 157

– unique identification information in relation to the pet owner (ie, owner’s date of birth, driver licence number or Medicare number) 157

– the ability to search by owner details 157

– the ability for data to be analysed by Local Government Area (not just by regions) 157

– the ability for data to be directly uploaded from pound systems, and 157

– centralised collection of registration fees so funding can be directly allocated to councils. 157
46 That the *Companion Animals Act 1998* and *Companion Animals Regulation 2008* be amended to require unique identification information in relation to the pet owner (ie, owner’s date of birth, drivers licence number or Medicare number), to be entered in the register at the time of entering animal identification information and when there is a change of ownership. 157

**Community order**

**Draft Recommendations**

47 That the NSW Government review how councils are currently applying Alcohol Free Zone (AFZ) and Alcohol Prohibited Area (APA) provisions in response to alcohol related anti-social behaviour and clarify the rationale and processes for declaring AFZs and APAs in the *Local Government Act 1993* and Ministerial Guidelines on Alcohol-Free Zones. 165

48 That the NSW Government provide an efficient process for consultation and decision making on temporary and events-based alcohol restrictions. 165

49 That the *Graffiti Control Act 2008* be amended to allow councils to prosecute individuals and organisations that commission or produce bill posters that are visible from a public place within their local government area. 168
This review is part of the NSW Government’s current local government reform program. It is aimed at reducing the overall compliance and reporting burdens on councils. This chapter discusses the relationship between State and local government and how the State imposes planning, reporting and compliance obligations on councils under its Acts. In addition to specific local government reforms, many other reviews have recently been undertaken, or are currently being undertaken, that impact on councils’ regulatory responsibilities. These reviews are reflected in our draft recommendations and findings.

3.1 Aims

The purpose of this review is to identify burdens placed on local government in the form of planning, reporting and compliance obligations to the State Government as imposed by policy and legislation, and to make recommendations for how any unnecessary or excessive burdens can be reduced. Our draft recommendations aim to improve the efficiency of local government in NSW and enhance the ability of councils to deliver services to their community.

3.2 Background

We have identified 67 Acts administered by 27 agencies that impose obligations on councils to prepare plans, provide information or comply with other requirements in the implementation of these Acts. These agencies include the Office of Local Government, the Department of Planning and Environment, the Department of Primary Industries Water, the Environment Protection Authority, NSW Health, Roads and Maritime Services, the Information and Privacy Commission and the NSW Ombudsman. Obligations are also imposed by NSW Government guidelines and directions. Councils’ key regulatory obligations are in the following broad functional areas:

- Administration and governance
- Water and sewerage
- Planning
- Building and construction
- Public land and infrastructure
- Animal control
- Public health and safety
- Environment, and
- Community order.

Whilst many regulatory obligations are necessary to achieve the objectives of the legislation, it is important they are efficient, and do not impose unnecessary or excessive burdens on councils. The draft recommendations in this report aim to reduce these types of burdens.

**Best practice regulatory principles**

The seven better regulation principles from the NSW Guide to Better Regulation are:

1. The need for government action should be established.
2. The objective of government action should be clear.
3. The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options.
4. Government action should be effective and proportional.
5. Consultation with business and the community should inform regulatory development.
6. The simplification, repeal, reform or consolidation of existing regulation should be considered.
7. Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.6

These principles are similar to the ten principles for Australian Government policy makers, outlined in The Australian Government Guide to Regulation.7

In our Issues Paper we asked whether these best practice regulatory principles provided a sound basis for assessing whether the planning, reporting and compliance obligations imposed by the NSW Government on councils are excessive, inefficient or unnecessary.

Submissions generally agreed with the current best practice regulatory principles. However, they noted that the principles do not require consultation with local government where the proposed regulation will involve councils, and that they needed updating to reflect the NSW Intergovernmental Agreement between the State and local government signed in April 2013.8

Under the Intergovernmental Agreement, before a responsibility (ie, service or function) is devolved to councils, local government should be consulted about its capacity to fulfil that responsibility.9

In our 2014 review of Local Government Compliance and Enforcement, we recommended that the Better Regulation Guide be revised to ensure NSW Government agencies consider the impact of regulatory proposals on local government and, in particular, their capacity and capability, prior to devolving regulatory responsibilities to councils.10 We again make this draft recommendation in Chapter 5 of this report as it is fundamental to addressing many of the burdens that NSW Government regulatory obligations impose on councils.

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8 Local Government NSW submission to IPART Issues Paper p 7; and Ku-ring-gai Council submission to IPART Issues Paper, August 2015, p 2.
9 Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships, signed on 8 April 2013, clause 5.
3.3 History

This review forms part of the NSW Government’s broader reforms in local government that commenced in 2011. Over the past few years, the NSW Government has commissioned reviews into:

- options for changes to local government governance models, structural arrangements and boundaries to improve the strength and effectiveness of local government – undertaken by the Independent Local Government Review Panel (ILGRP)\(^\text{11}\)
- the statutory framework for local government, the *Local Government Act 1993* and *City of Sydney Act 1988* – undertaken by the Local Government Acts Taskforce (LG Acts Taskforce),\(^\text{12}\) and
- local government compliance and enforcement to reduce unnecessary regulatory burdens placed on businesses and the community by councils – undertaken by IPART.\(^\text{13}\)

The NSW Government is currently implementing reforms recommended by the ILGRP and LG Acts Taskforce. One recommendation of the ILGRP was to commission IPART to undertake a whole-of-government review of the regulatory, compliance and reporting burdens on councils.\(^\text{14}\)

Other recommendations of the ILGRP are currently being pursued by the NSW Government as part of its Fit for the Future reforms, focusing on strengthening councils’ abilities to provide the services and infrastructure communities need.\(^\text{15}\)

Our previous *Local government compliance and enforcement* review examined local government compliance and enforcement activity and made recommendations to reduce regulatory burdens for business and the community. The Final Report was submitted to the NSW Government in October 2014; however, it is yet to be publicly released. Therefore, in this Draft Report we only refer to the draft recommendations of our earlier review. This is particularly relevant where we have made draft recommendations in this review on issues about which we made recommendations in that review.

\(^{11}\) ILGRP Final Report.

\(^{12}\) LG Acts Taskforce Final Report.

\(^{13}\) IPART, *Local government compliance and enforcement - Draft Report*.

\(^{14}\) ILGRP Final Report, Recommendation 8.2, p 16.

Other reviews

In addition to the NSW Government’s recent reviews into local government, many of the regulatory obligations raised as burdens during the course of our review have either been recently reviewed or are currently the subject of other reviews. Some of these reviews include:

- **Weeds – Time to get serious – Review of weed management in NSW, Natural Resources Commission (NRC), May 2014.** The Government adopted the majority of the NRC’s recommendations.\(^\text{16}\)

- **The Independent Biodiversity Legislation Review Panel** which presented its final report to the Minister for the Environment in December 2014. The report contained recommendations to improve the legislative and policy framework for biodiversity conservation and native vegetation management in NSW.\(^\text{17}\) The NSW Government accepted all recommendations of the review.\(^\text{18}\)

- **Independent Review of Swimming Pool Barrier Requirements for Backyard Swimming Pools in NSW** conducted by Michael Lambert. A Discussion Paper was released September 2015, and the report to Government due in December 2015.\(^\text{19}\)

- **NSW Crown Land Management Review** commenced in June 2012, with the NSW Government releasing its response to the Crown Lands Legislation White Paper in October 2015.\(^\text{20}\)

- **Independent Review of the Building Professionals Act 2005** conducted by Michael Lambert. The Final Report of this review was submitted to the NSW Government 31 October 2015,\(^\text{21}\) but to date, only the Draft Report is publicly available.

Reforms have also recently been implemented in the area of companion animals following the NSW Government’s support of most of the Companion Animals Taskforce recommendations and the introduction of the *Companion Animals (Amendment) Act 2013*.\(^\text{22}\)

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\(^{18}\) Correspondence from the Office of Environment and Heritage, 2 November 2015.


Our draft recommendations generally align with the objectives and recommendations of these reviews. Where we consider that the recommendations of these other reviews would directly deal with the identified burden on councils, we have not made draft recommendations in this Report. These issues are included in Appendix B.
Method

We commenced our review by defining its scope and considering what makes a regulatory obligation a burden. We initially identified inefficient, unnecessary or excessive regulatory obligations through submissions to our Issues Paper and council questionnaire responses. The workshops we held with councils allowed further identification of these burdens and discussion of proposed solutions.

Development of solutions involved consideration of the rationale for the planning, reporting and compliance obligations on local government, and any risks to the NSW Government and the community from reducing them. Our own research and consultation with NSW Government agencies has assisted in developing our draft recommendations and findings, which are focused on reducing the identified regulatory burdens.

4.1 The scope of our review

We have focused our draft recommendations on the planning, reporting and compliance obligations placed on councils by State Government legislation and policies that are specific to councils.

Where an obligation applies to any member of the community, government organisation or business undertaking a particular function, we have deemed it to be out of scope. Consequently, several issues raised by councils have been treated as out of scope for this review, including pollution incident reporting, EEO management plans, and the parking space levy. These issues are discussed in Appendix C.

However, we have considered some areas that are not strictly specific to councils but where councils are the dominant provider and / or where the obligation has a large impact on councils. One such area is landfill facilities.

Matters considered by IPART in its 2014 Local Government Compliance and Enforcement review related to burdens placed on businesses and the community are outside the scope of this review.
4.2 What makes an obligation a burden?

A regulatory obligation typically imposes costs on the regulated entity to comply with the regulation and achieve its objectives. If the benefits of the particular obligation exceed these costs it may be justified. However, regulation that is poorly designed or implemented can impose unnecessary and excessive costs on those being regulated. These excessive costs or burdens are the focus of this review.

In considering whether a regulatory obligation is a burden for local government we assessed whether it is excessive, inefficient or unnecessary. Table 4.1 below gives examples of the features of excessive, inefficient or unnecessary regulatory obligations. We have sought to address these features in our draft recommendations and findings.

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<thead>
<tr>
<th>Table 4.1 Nature of regulatory burden</th>
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<td>Excessive</td>
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Possible sources of these burdens are:

- An obligation requiring extensive consultation and lengthy publication periods prior to implementation could be considered onerous.
- Duplicative or overlapping requirements arising from a lack of coordination amongst NSW Government agencies resulting in councils being asked for similar information in a different format or at a different time.
- Information requested by NSW Government agencies not being used or the use is sub-optimal, for example, useful feedback is not provided to councils.

4.3 Identifying regulatory burdens

To identify the planning, reporting or compliance obligations imposed on local government which are excessive, inefficient or unnecessary, we initially sought information through submissions to our Issues Paper, council questionnaires and workshops.
Stocktaking local government’s regulatory obligations

Our first task was to map the planning, reporting and compliance obligations imposed on councils through legislation (Acts and Regulations) and by other means such as guidelines and directions.

We started with the Register of Local Government regulatory functions that was compiled in 2012 as part of IPART’s previous review of Local Government Compliance and Enforcement, and supplemented this with the Legislative Compliance Database (LCDatabase) established by Local Government Legal (the legal services entity established by Hunter Councils). This database identifies the main Commonwealth and NSW legislation that impose obligations on local government.

We further mapped the planning and reporting obligations of local government by sending an information request to 27 NSW Government agencies responsible for administering legislation that imposes regulatory functions on councils.

Issues paper

We released an Issues Paper in July 2015 which sought information on:

- the planning, reporting or compliance obligations imposed specifically on councils by NSW Government agencies that create unnecessary or excessive burdens
- the impacts (costs or benefits), particularly on councils, of these obligations, and
- how these burdens could be removed or reduced.

We received 42 submissions in response to our Issues Paper, including 28 from councils. Other submissions came from Local Government NSW, Regional Organisations of Councils (ROCs), industry bodies, NSW Government agencies, water county councils and two individuals.

Questionnaire

We distributed a questionnaire to all councils seeking information on:

- unnecessary or excessive planning, reporting or compliance obligations imposed by the State
- the impacts of these obligations, and
- where possible, quantifying these impacts.

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23 The Stenning Register was compiled in October 2012 as part of IPART’s Review of Local Government Compliance and Enforcement. While it is not current, it is a useful starting point to identify broad areas of council responsibility.

The questionnaire, consisting of spreadsheets for each local government functional area, did not require councils to report on every planning, reporting and compliance obligation imposed by the State Government, rather only those obligations considered either a burden or an example of best practice.

We also sought details regarding the qualitative and quantitative impacts of the identified regulatory burdens. This included details of the average annual compliance costs in terms of staff, training, IT systems, delays and licence fees, as well as any cost recovery mechanisms for these obligations.

We received questionnaire returns from 47 councils which, together with the submissions to the Issue Paper, provided a large amount of useful information about what councils consider to be the most excessive, inefficient and unnecessary regulatory obligations imposed on them. However, we received less information regarding the qualitative and quantitative costs of these regulatory burdens. Box 4.1 below lists the areas raised most frequently in submissions and questionnaire returns.

**Box 4.1 The ‘top five’ regulatory burdens and best practice examples**

The areas arising most frequently in submissions and questionnaire returns as representing an unnecessary, excessive or inefficient burden were:

- Financial management
- Development approvals
- Various aspects of local government administration (ie, GIPA reporting, IP&R framework, and tendering processes)
- Companion animals management
- Waste management.

The questionnaire also asked for examples of regulatory best practice. The following areas were most frequently raised:

- Food safety
- Other local government administration (ie, IP&R framework, pecuniary interest returns, public interest disclosures, OLG promoting better practice reviews)
- Companion animals management
- Waste management
- Public roads.

These ‘top five’ lists show that there are many areas that some councils consider to be a burden but that others consider to be an example of best practice. This highlighted the differing capacities of councils to manage their regulatory obligations and that particular obligations impact councils differently. It also highlighted the need for this review to investigate whether what is considered a burden by some councils is actually a burden, and why.
Workshops

We used the information from submissions and questionnaire returns as a starting point for discussions with councils in four workshops we held around NSW.

We held workshops in Coffs Harbour, Wagga Wagga, Dubbo and Sydney between mid-September and early October. We appreciate the participation of the councils who attended. The workshops enabled us to explore more deeply and prioritise the regulatory burdens faced by councils, as well as potential solutions. In developing potential solutions, we also considered any risks these solutions may pose such as:

- less data being made publicly available
- less transparency
- reduced accountability
- reduced safety standards, or
- reduced service to the community.

The workshops were attended by 68 people representing 45 councils and Local Government NSW.

Appendix D lists the stakeholders consulted during our review.

4.4 Developing options for reform

Our starting point for developing options for reform was to investigate the nature of the burdens raised by councils and others. We considered the features of the burden. For example:

- Is information being requested by one State agency duplicating what is collected by another agency?
- Are particular reports that are submitted by councils being used?
- Is the regulatory obligation inconsistent with other obligations or requirements?

We undertook more research into the identified burdens, including the recommendations and outcomes of other reviews regarding similar issues, as discussed in section 3.3. We also consulted with relevant NSW Government agencies regarding the burdens councils had raised, and sought feedback on the proposed solutions.

The draft recommendations and findings in this report aim to streamline and reduce the planning, reporting and compliance obligations we have found to be excessive, inefficient or unnecessary. However, they also take account of the
rationale for the obligation. That is, we have considered the stated legislative or policy objectives, and whether these objectives would still be achieved if our draft recommendation was implemented.

Burdens for which we have not made draft recommendations

Included at Appendix B are burdens identified by stakeholders where we have not made a draft recommendation or finding. For these issues we have included a short summary of the issues raised by stakeholders, feedback from agencies where applicable, as well as our analysis and conclusions.

There are several reasons why we have not made a draft recommendation or finding for a particular issue.

Prioritisation – the large number of issues raised by stakeholders has required us to prioritise and focus our draft recommendations and findings on the major areas of regulatory burden.

Agencies are addressing the burden – for some issues we have not made draft recommendations because the relevant agency acknowledges the impact of current policies and legislation on councils and is either already implementing strategies to reduce the burden, or is currently investigating options to deal with it.

Other reviews are addressing the issues - as mentioned in section 3.3, many of the issues raised by councils have either been addressed by recent policy and legislative reviews or are currently the subject of review. Where we considered that another review was addressing the particular burden, we have not made draft recommendations.

Other reasons why we have not made a draft recommendation on an issue include:

- the compliance activity is not mandatory for councils
- the obligation has been misunderstood
- the burden appears insignificant, or
- the burden has only been raised by one council or council officer.

These matters are different from those we consider to be out of scope for this review (Appendix C).

Using this approach has meant we have not made any draft recommendations regarding councils’ public health and safety or environment functions, and only a few for councils’ community order functional areas. Other issues raised in these areas are discussed in Appendix B.
5 Systemic issues

Stakeholders raised burdens of a systemic nature which we address in this chapter. These are burdens that are not specific to a particular regulatory area, but rather are associated with councils’ general functions or several regulatory areas. Improvements would yield significant benefit across local government. These burdens relate to:

- The alleged failure of the State to take into account the impact of new or amended regulatory obligations on councils, before imposing these obligations.
- The cumulative burden of regulations on councils.
- The impact of the regulation or capping of fees by the State on councils’ ability to recover the costs of undertaking their compliance obligations.
- The complexity of grant systems across all local government functional areas.
- The duplicated effort in complying with multiple reporting requirements imposed by the State.
- The unnecessary cost to councils of complying with requirements for public notices to be published in print media.

We recommend changing the way the State develops regulatory proposals that devolve responsibilities to councils to ensure that the impacts on councils are properly considered. We made a similar recommendation in our previous Local Government Compliance and Enforcement review. This involves ensuring that requirements on councils are reasonable. It also means improving the tools and resources used by State agencies to:

- manage the cumulative impact of regulatory proposals
- consolidate council reporting and sharing of council data between State agencies, and
- assess new proposals to collect data from councils.

These tools and resources include a proposed Register of local government reporting, planning and compliance obligations, the NSW ICT Strategy and Information Asset Registers, and a ‘gateway’ framework for assessing new State agency proposals for reporting from councils.

We also recommend deregulating council fees for statutory approvals and inspections where there is effective competition for the service or, alternatively, where the service can only be provided by the council, to allow fees to be regularly reviewed and indexed, or for councils to be reimbursed by the State for any under-recovery of efficient costs.

We recommend amending the guidelines for grants administration to create streamlined acquittal and other processes for councils. We also recommend that councils be allowed to notify the public using online advertising, mail-outs or other suitable alternatives to print media.

Our draft recommendations in this area would enhance the capacity and capability of councils to undertake reporting, planning and compliance obligations by:

- enabling better cost recovery and prevent ‘cost shifting’ to councils
- preventing the number of regulatory requirements on councils from growing unnecessarily
- avoiding the creation of duplicative reporting or unnecessary requirements, and
- removing existing unnecessary requirements.

Our draft recommendations would also facilitate a whole-of-government approach to the development of regulatory proposals and processes. This would prevent unnecessary reporting, planning or compliance burdens being placed on councils.

Other systemic burdens raised by councils on which we are not proposing to make recommendations, or were deemed out of scope, are discussed in Appendix B, Table B.1 and Appendix C, respectively.

### 5.1 Impact of new or amended regulatory obligations

Councils are concerned that State agencies fail to consider the impact of new or amended regulatory obligations on their resources and capacity. According to councils, this results in their resources being eroded through ‘cost shifting’ and an inability to undertake the functions efficiently.

Councils and other stakeholders expressed similar concerns during our previous review of *Local Government Compliance and Enforcement*. In our previous review, business stakeholders were concerned that councils’ lack of resources and expertise to undertake regulatory functions was adding to business costs through increased delays; poor decision-making; inconsistent, incorrect or unclear advice; and overly prescriptive approaches to regulatory functions. Community
stakeholders were concerned that it resulted in councils failing to undertake their regulatory responsibilities.26

Under the *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships* (Intergovernmental Agreement), there is agreement that before a responsibility (ie, service or function) is devolved to councils, local government is to be consulted and the financial impact is to be considered within the context of the capacity of local government.27

In our *Local Government Compliance and Enforcement* review, we recommended that DPC revise the *NSW Guide to Better Regulation*28 (the Guide) to provide a mechanism to implement the Intergovernmental Agreement and consider the impact on councils in the regulation-making process. We proposed that State agencies address a number of issues in an ‘implementation and compliance plan’ accompanying a regulatory proposal, including:

- the structures for coordination between the State and councils ie, ongoing consultation and partnership arrangements
- the tools and infrastructure to be provided by the State to councils (eg, registers, databases, portals or online facilities, standardised or centralised forms, inspection checklists, templates for making orders or giving directions, etc)
- the mechanisms for recovering councils’ efficient regulatory costs (eg, fees, charges, debt recovery, funding arrangements, hypothecated revenue, etc)
- the training or certification needs of councils and how they would be met, and
- the methods for council regulatory or service performance monitoring and reporting to ensure that requirements are targeted, useful and not unnecessarily burdensome.29

Based on stakeholder comment to this review, a coordinated, whole-of-government approach to developing regulatory proposals is also required to avoid unnecessary obligations and duplicative reporting, and to implement regulatory processes effectively and efficiently. This would require State agencies to consider opportunities for streamlining or ‘piggy-backing’ onto existing structures, obligations, regulatory tools or reports (eg, ICT infrastructure platforms, existing planning requirements, existing consultation forums, data sharing, consistent approaches, etc). To assist State agencies to achieve this objective, State agencies should have regard to the NSW ICT Strategy and Information Asset Register (discussed further in section 5.5 below) and our

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27  *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships*, clause 5.8.
proposed Register of local government reporting, planning and compliance obligations (discussed further in section 5.2 below).

Our draft recommendation would result in better collaboration and consideration of impacts of new or amended regulation on local government. It would:

- enhance the capacity and capability of councils to undertake reporting, planning and compliance functions through the creation of ongoing consultation, coordination, guidance, regulatory tools and funding to councils (to the extent needed by the regulatory proposal)
- prevent ‘cost shifting’ by considering the financial impact on local government, consistent with the Intergovernmental Agreement, and
- create genuine partnerships with State agencies in undertaking reporting, planning or compliance functions to achieve regulatory goals, consistent with the Intergovernmental Agreement.

Draft Recommendations

1 That the Department of Premier and Cabinet (DPC) revise the NSW Guide to Better Regulation to include requirements for State agencies developing regulations involving regulatory or other responsibilities for local government, as part of the regulation-making process, to:
   - consider whether a regulatory proposal involves responsibilities for local government
   - clearly identify and delineate State and local government responsibilities
   - consider the costs and benefits of regulatory options on local government
   - assess the capacity and capability of local government to administer and implement the proposed responsibilities, including consideration of adequate cost recovery mechanisms for local government
   - take a coordinated, whole-of-government approach to developing the regulatory proposal
   - collaborate with local government to inform development of the regulatory proposal
   - if establishing a jointly provided service or function, reach agreement with local government as to the objectives, design, standards and shared funding arrangements, and
   - develop an implementation and compliance plan.
5.1.1 Stakeholder comment

Local Government NSW and councils commented on the burdens imposed as a result of new or amended regulations which fail to take account of impacts on councils, including cost shifting. The burdens and measures to address them are summarised in the Box below.

Box 5.1 Summary of concerns and proposed solutions

Council concerns:

- The regulation-making process does not sufficiently take into account the impact of new or amended regulations on councils eg, resources, costs, expertise and capacity.
- There has been and continues to be considerable cost shifting onto councils by the State giving responsibilities to councils where cost recovery mechanisms do not allow councils to fully recover their costs.
- Councils have absorbed a lot of costs incrementally.
- There is duplicative and multiple reporting to the State.

Solutions proposed by councils:

- Amend the regulation-making process to fully take into account impacts on councils before implementing new or amended regulations.
- Have a register and undertake a stocktake of what regulations imposing responsibilities on councils are currently in existence.
- Eliminate rate pegging or streamline the special variation process.
- Deregulate fees.
- Provide greater State funding to councils, for example, through fees, charges, levies or rates.
- Consider the concept of a special cost offset mechanism in rate rises applicable for all councils, say every five years, so problems with absorbing costs within councils would be reduced.
- Greater data sharing between agencies. Set up a data registry so agencies know what data each agency is collecting from councils, so can share data or not ask for similar data in a different form.
- It should be a requirement for State agencies to thoroughly scan all government databases to ensure that the desired data has not already been collected before introducing new reporting requirements.

Sources: Various submissions to IPART and comments from councils at Coffs Harbour, Wagga Wagga and Sydney workshops.
5.1.2 Background

Regulation-making process

NSW has well-established regulatory impact analysis (RIA) processes established under the Subordinate Legislation Act 1989 and the Guide30.

In NSW, RIA relating to the regulatory design process is implemented largely through administrative requirements imposed via the Guide. Under the Guide, State agencies are required to prepare a Better Regulation Statement for all significant new and amending regulatory proposals. For all other regulatory proposals, State agencies are required to demonstrate compliance with the ‘better regulation principles’, which are set out in the Guide. There are also formal requirements for a Regulatory Impact Statement (RIS) to be prepared in relation to new regulations only (not Acts or other statutory instruments) under the Subordinate Legislation Act 1989.31

There is currently no explicit requirement to have regard to the impact of regulatory proposals on local government (as distinct from government in general) in the Guide or the Subordinate Legislation Act 1989. This is not consistent with the principles agreed under the Intergovernmental Agreement.

Cost shifting

Councils have raised concerns with cost shifting from the State Government to local government for many years. The submission from Local Government NSW addressed this issue in detail:

For many regulatory functions councils are required to fulfil, cost recovery mechanisms do not allow them to fully recover the cost associated with the regulatory activity.

... Local Government NSW considers this to be cost shifting and measures the shortfall in cost recovery in its regular cost shifting survey.

... LGNSW’s cost shifting survey has identified many regulatory activities where cost shifting occurs, including:

- processing of development applications
- administration of the Companion Animals Act 1998
- functions under the Protection of the Environment Operations Act 1997
- functions as control authority for noxious weed


31 Subordinate Legislation Act 1989 section 5.
• administration of Contaminated Land Management Act 1997
• functions under the Rural Fires Act 1997
• provision of immigration services and citizenship ceremonies
• administration of food safety regulation, and
• regulation of on-site sewerage facilities.

In 2011-12, total cost shifting was estimated to amount to $582 million or 6.28% (6.37% in 2010-11) of Local Government’s total income before capital amounts.

Of that, the amount of $118.5 million was related to regulatory functions where cost recovery mechanisms do not allow councils to fully recover the cost associated with the regulatory activity.32

As discussed above, the Intergovernmental Agreement is aimed at preventing cost shifting. Implementation of our draft recommendation above would address cost shifting by requiring State agencies to consider adequate funding or cost recovery mechanisms for local government before imposing a new or amended regulatory requirement on local government.

We have also considered other concerns and suggestions raised by councils to address cost shifting, in particular those relating to rate pegging and regulated fees. Concerns relating to rate pegging and the special variation process are discussed in Appendix B, Table B.1. We have not made a draft recommendation in this area. Concerns relating to regulated fees are discussed below in section 5.3.

5.2 Cumulative impact of regulations

Councils are responsible for a large range of regulatory functions. In our previous Local Government Compliance & Enforcement review, our consultants, Stenning and Associates, created a register of local government regulatory functions (the Stenning register). Through the Stenning register we identified a total of 121 local government regulatory functions, involving 309 separate regulatory roles. These functions emanated from 67 State Acts, administered by 8 Departments or Ministries and 23 State agencies.33

32 Local Government NSW submission to IPART, August 2015, pp 8-9.
According to councils, it is the cumulative burden of complying with a multitude of regulatory requirements that is the critical issue needing to be addressed. Councils are seeking a mechanism to keep a ‘check’ on the cumulative burden. Suggestions included:

- The State should have a ‘one on, two off’ rule for regulations imposing responsibilities on local government to reduce the cumulative burden.

- The State should keep a list of reporting, planning and compliance obligations on councils to which the State should have regard as part of the regulation-making process to keep a ‘check’ on the cumulative burden and prevent the imposition of unnecessary or duplicative requirements.

We made a draft recommendation in our *Local Government Compliance and Enforcement* review that the NSW Government should maintain the Stenning register to:

- manage the volume of regulatory responsibilities delegated to councils, and

- assist State agencies when developing new or amended regulatory obligations to avoid creating duplications or overlaps with existing obligations or powers.34

We noted that IPART would be a suitable body to update and maintain the register. However, this register only captured councils’ compliance and enforcement obligations, and is now out of date.

We consider that reporting and planning obligations could be added to our previously proposed register to create a more comprehensive register of all obligations imposed on councils - reporting, planning and compliance. This would be a more effective tool to reduce the cumulative impact of regulation on councils by:

- managing the volume of regulations imposed on councils

- preventing unnecessary or duplicative regulation, and

- facilitating a whole-of-government approach to reporting obligations, imposing consistent provisions/powers, using effective cost recovery mechanisms or other regulatory approaches.

**Draft Recommendation**

2 That the NSW Government maintain a *Register of local government reporting, planning and compliance obligations* that should be used by State agencies in the regulation-making process to manage the volume of regulatory requirements imposed on councils and to avoid creating unnecessary or duplicative requirements.

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5.2.1 Stakeholder comment

A consistent, over-arching concern raised by councils in our consultation process is the cumulative burden of regulation on councils. This burden and measures to address it are summarised in the Box below.

Box 5.2 Cumulative burden of regulation

Council concerns:
- It is the sheer volume of things councils have to do that is the problem – the cumulative impact - they are all small things in themselves, but together impose a significant burden.
- The cumulative effect of regulation can also be impacted by the different approaches of councils: for example, some councils enforce alcohol restrictions, others leave that to the police.

Solutions proposed by councils:
- There should be a ‘one on, two off’ rule for local government regulatory requirements.
- The regulatory burden should be capped by offsetting all new regulatory requirements with the removal or streamlining of existing requirements.
- The State should keep a list of all regulations imposed on local government which should be considered as part of the regulation-making process, to keep a ‘check’ on the cumulative burden.
- The State should have a register and undertake a ‘stocktake’ of what regulation on local government is currently in existence.

Sources: Local Government NSW submission to IPART, 14 August 2015, p 8; various comments from councils at Coffs Harbour, Wagga Wagga and Sydney workshops.

5.2.2 Background

The NSW Government has a ‘one on, two off’ policy for principal legislative instruments (ie, Acts and Regulations) to ensure that:
- the number repealed is at least twice the number introduced (a 'numeric test'), and
- within each portfolio, the regulatory burden imposed by new instruments is less than that removed by the repeal of old instruments (a ‘regulatory burden constraint’).\(^{35}\)

This existing policy should benefit councils, as the majority of regulatory burdens imposed on councils are imposed by the State’s principal legislative instruments. However, as the focus of the policy is to reduce burdens on business and the community, not local government, councils only benefit directly where they are regulated in the same way as other businesses (eg, landfill operational requirements, WH&S obligations).

We are concerned that in practice a ‘one on, two off’ rule for local government regulation may be unworkable, as it may conflict with the existing ‘one on, two off’ rule for the benefit of the community and businesses. Removing regulation from councils may result in regulatory burdens being shifted onto the community or businesses. As recommended above, we consider a register would be a better tool for managing the cumulative impacts on councils. Use of a register is also consistent with the NSW Government’s ‘one on, two off’ policy approach to new regulation.

As discussed above, we identified councils’ compliance and enforcement obligations in our previous Local Government Compliance and Enforcement review. Responses from State agencies to our information requests in this review have allowed us to identify reporting and planning obligations imposed on councils. Reporting obligations, in particular, are not always based in legislation, but can be imposed administratively (eg, through the Department of Planning & Environment’s Planning Circulars or the Office of Local Government’s Circulars to councils).

A comprehensive register of all reporting, planning and compliance obligations imposed on councils used by State agencies in the regulation-making process would be a more effective tool for managing the cumulative impact of regulation on councils.

### 5.3 Regulated fees

Some of the fees that councils can charge for their regulatory functions are set by the relevant legislation, and do not reflect the costs of delivery, and in most cases, there is no mechanism to allow increases over time. Consequently if a council’s costs of delivery are greater than what it can recover via the regulated fee, ratepayers are subsidising these costs, either through their rates or a reduction in other services. This is a type of cost shifting from the State to local government.

To address this, we have made three draft recommendations regarding statutory fees to reflect the different markets in which fees are currently regulated for council services.
We have recommended that restrictions on fees for statutory approvals and inspections be removed, subject to monitoring and benchmarking, to allow councils to recover the cost of delivery of these services. Many services currently subject to regulated fees are delivered in a competitive market, such as in competition with private certifiers. This competition would help ensure fees remain reasonable following deregulation.

For some functions, such as inspection of backyard swimming pools, there may not be competition from a private operator, as they are required to be undertaken by the local authority. However, it may be possible that councils, particularly in metropolitan areas, could compete with each other to deliver the service. In a deregulated market, this competition could also ensure that fees remain reasonable.

However, total deregulation of fees may not be appropriate, particularly where the council is a monopoly provider, for example, of development approvals in their local government area. In these cases, we recommend continuing to set the fee by regulation with more frequent review (every three to five years), and allowing them to increase annually in line with the CPI or an index of fee-related costs.

Where the NSW Government’s policy of consistency and affordability in council fees requires particular fees to be set below cost recovery, we recommend that the State reimburse councils for the shortfall in efficient costs.

Draft Recommendations

3 That the NSW Government remove restrictions on fees for statutory approvals and inspections to allow for the recovery of efficient costs, subject to monitoring and benchmarking.

4 Where fees continue to be set by statute, that the relevant NSW Government agency reviews the level of the fees every 3-5 years and amends the relevant legislation to allow these fees to increase annually in line with CPI or an index of fee-related costs.

5 That if statutory fees are capped below cost recovery to ensure affordability or for other policy reasons, then the NSW Government should reimburse councils for the shortfall in efficient costs.

5.3.1 Stakeholder comments

Regulated fees and the impact such fees have on the ability of councils to recover the costs of statutory approval and inspection functions, was raised as an issue in council questionnaires, submissions, and workshops.
The main types of regulated fees are:

- search and processing fees for GIPA applications (although these fees also apply to State agencies)
- administration fees for inspections and issuing notices for environmental and public health compliance
- fees under the Environment Planning and Assessment Regulation 2000 for development applications and issuing certificates
- swimming pool certificates and inspection fees - the maximum fee a local authority (council) can charge for carrying out an inspection of a swimming pool is $150 for the first inspection, $100 for the second inspection. Councils are unable to charge for a third or subsequent inspection.36

Issues raised by stakeholders regarding the burden created by regulated fees, and potential solutions are summarised in the Box below.

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36 Swimming Pools Regulation 2008, section 18A.
Box 5.3 Stakeholder comments on regulated fees

Council concerns:

- Regulated fees do not cover costs eg, development fees under section 603 and section 149 certificates under the EP&A Act.
- In some instances, fees are very infrequently reviewed, so while costs have increased, revenue has not. As an example, income levels for development assessment processes have remained static over the last 10 years while expenditure for the council has increased by 85%. This has resulted in the process being subsidised by the ratepayer at almost 4% of ordinary rates per annum.
- Irregular review of fees – example of development applications last amended in 2010, and previously not since 1989.
- Statutory DA fees are capped and have not been adjusted for CPI and do not reflect the actual cost of DA assessment.

Solutions proposed by councils:

- Each Council could set their own fees to reflect their individual business case and cost structure.
- Fees and charges should be deregulated so that councils can fully recover costs. It should be recognised that the costs are not uniform across councils because of the different circumstances they operate under and the variable impacts of regulation across the State. If not deregulated, they should at least be indexed so as to preserve cost recovery in real terms.
- Require all State agencies to review their fees and charges, including those required to be levied by local government, annually in the same cycle as required for local government.
- In reviewing statutory fees, the LGCI should be applied annually to all statutory fees where the work is actually done, or service delivered by local government, [potentially] without reference to State agencies, removing even more steps in the process that do not add value for the community.

Sources: Various submissions and questionnaire responses.

Some councils raised issues regarding the public notice required before a change in fees takes place. However, councils do not have to give 28 days’ notice of fees set by the State, and the requirement to do so only relates to fees for services determined by councils.\(^{37}\)

\(^{37}\) *Local Government Act 1993*, section 610(F).
5.3.2 Background

The Independent Local Government Review Panel recommended the removal of restrictions on fees for statutory approvals and inspections, subject to monitoring and benchmarking by IPART.\(^{38}\)

However, in its response, the NSW Government did not support removing restrictions on fees. Instead, it remains committed to consistency and affordability in council fees, to minimise red tape, protect service users and avoid significant local variation.\(^{39}\)

5.4 Complexity of grants system

The NSW Government provides grant funding in two main forms:

- Funds provided without the expectation of a measurable benefit (ie, untied grants).
- Funding provided for a specific purpose directed at achieving goals and objectives consistent with government policy.

The NSW Government provides grants to fund social, health, transport, education, community activities, research and environmental activities.\(^{40}\) The two largest groups of recipients for NSW Government grants are local councils and non-government organisations (NGOs).\(^{41}\)

We make draft recommendations aimed at addressing the regulatory and reporting burdens identified by councils relating to applying for and administering grants.

We address the difference in risk levels and internal controls between councils and NGOs by recommending councils be separately recognised in guidelines published by the Department of Premier and Cabinet (DPC).\(^ {42}\)

Removing acquittal requirements for untied grants would remove an unnecessary burden for councils as untied grants have, by definition, no restrictions on how funds are dispersed and acquittal does not impact on how the funds are spent.

\(^{41}\) Ibid, p 25.
\(^{42}\) Department of Premier and Cabinet, Good Practice Guide to Grants Administration, November 2010.
A high level of risk control in grant acquittal requirements, while suitable for the NGO sector, may be an unnecessary burden for councils. Many councils have robust internal controls, and a lower risk profile, compared with NGOs, as well as comprehensive external audit requirements and well developed, mature risk mitigation strategies.

The *Good Practice Guide to Grants Administration* recommends three to five year performance-based agreements for recurrently funded services.\(^{43}\) Our draft recommendation for four years is consistent with our proposal relating to temporary employment (Draft Recommendation 30). This would allow councils to align temporary employment arrangements with grant funded project delivery.

Councils have also indicated that re-applying for recurring grant funding may be an unnecessary or excessive burden.

**Draft Recommendations**

6 That the Department of Premier and Cabinet amend the *Good Practice Guide to Grant Administration*, to:

- recognise Local Government as separate from non-government organisations
- remove acquittal requirements for untied grants
- explicitly address ongoing maintenance and renewal costs when funding new capital projects
- require Agencies to rely on existing council reporting to assess financial stability and management performance of councils
- lengthen acquittal periods for ongoing grant programs to four years, and use Memorandum of Understanding (MOU) arrangements, rather than requiring councils to reapply annually, and
- provide for a streamlined acquittal process for grants of less than $20,000 in total, examples of streamlining include:
  - not requiring further external financial audit
  - using risk-based controls and requirements, and
  - confining performance measurement to outcomes consistent with the purpose of the grant.

### 5.4.1 Stakeholder comments

Issues raised by stakeholders concerning grant funding to councils are summarised in the Box below.

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Box 5.4 Stakeholder comments on the grants system

Council concerns:

- councils receive grants that are administered by different agencies, with different application and reporting requirements resulting in a system that is onerously complex
- due to a lack of resources, smaller councils are disadvantaged by “dollar for dollar” funding schemes as they cannot raise or reallocate funds to match grant funding amounts
- councils compete for the same grant funding creating inefficiency, disadvantage for smaller councils and a disincentive for regional collaboration
- requiring acquittal for untied funding is unnecessary
- councils invest too many resources applying for grants they may or may not receive
- not enough provision is made in grant structures for application, administrative and ongoing management costs (i.e., overheads), and
- grants are often given for new infrastructure, but councils cannot afford ongoing maintenance, representing a form of cost shifting.

Solutions proposed by councils:

- streamline access to government grant funding using a single gateway or portal
- streamline application processes and acquittal for ‘small grants’ (e.g., less than $10,000)
- reduce or eliminate grant acquittal requirements for untied grants
- simplify applications for councils compared with other non-government applicants as councils have more mature internal controls
- use fixed allocation methods more often, and
- provide grant funding for existing infrastructure, rather than for new infrastructure.

Sources: Various submissions and Wagga Wagga and Dubbo workshops.

5.5 Multiple reporting/data management

Councils provide various reports and datasets to multiple NSW State Government agencies, as well as to other stakeholders such as the community, industry and professional bodies, and the Federal Government.

A burden is created when councils provide data (sometimes the same or similar data) to multiple agencies and across different ICT platforms. Our draft recommendations would:

- reduce, and help prevent, future instances of the same or similar data being requested by different agencies (i.e., duplicative reporting) by allowing agencies and the community to access all available reports and datasets which may already contain the data being sought
provide a central point for councils and agencies to provide reports and exchange data, which means councils would only have to provide data once, and

assist in measuring the cumulative impact of reporting requirements on councils as all reporting burdens can be accessed on a single website.

We recommend using elements of the existing NSW Government’s ICT strategy to achieve these outcomes, as this strategy is already in place and being used by the State Government.

We have recommended OLG take the role of gate-keeper for new requirements for councils to report to State agencies. Before requesting data, an agency should consider what information is already available, via a central repository or portal. OLG should apply a cost benefit methodology to proposals for new reporting, to prevent excessive or duplicative requirements.

Draft Recommendations

7 That the Department of Finance, Services and Innovation use the NSW ICT Strategy and Information Asset Registers to:
– provide a central website to consolidate Local Government reporting portals, searchable data sets, reports and publications
– facilitate council use of the central website, and
– facilitate sharing of Local Government data and information between State Government agencies.

8 That the Office of Local Government introduce a “gateway” framework, using a cost-benefit methodology, to assess new State agency proposals for reporting and data collection from Local Government.

5.5.1 Stakeholder comments

Stakeholders identified the following issues relating to multiple reporting burdens and data management:

Councils report similar data to multiple agencies. This creates duplicate reporting burdens when data may be similar enough that the outcomes being measured are the same, but different enough to create additional collection activity (e.g., DPE and Sydney Water collect similar data regarding housing completions and approvals).

The cumulative effect of reporting requirements across the local government sector is not being measured. Councils have indicated the cumulative burden of all reporting is excessive.44

Councils suggested the following:

- Councils should only report the same data to the State Government once, through one State agency.
- The use of on-line portals would help to make reporting more accurate and efficient through self-validation rules and greater ease of use.
- Data-warehousing or a central repository may make reporting more efficient and help in measuring the cumulative effect of reporting requirements.\(^\text{45}\)

### 5.5.2 Background

While standard reporting and data warehousing could leverage technology to streamline, or improve the efficiency of reporting for councils, it may not, in itself, reduce duplication or the amount of information collected. Consideration would still have to be made of what information is required and why, and what council resources are required to provide it.

The NSW ICT Strategy is a recently developed information management framework which ensures that government data and information can be shared or re-used by agencies, the community or industry. The strategy is targeted mainly at State agencies, but could be more widely applied to local government.

The NSW ICT Strategy’s aims include:

- better information sharing between departments
- financial and performance management to improve decision making, and
- more effective and efficient service delivery.\(^\text{46}\)

NSW Government open data initiatives include:

- An Information Asset Register to allow State Government agencies to collect data once and reuse, reducing duplicative reporting requirements.\(^\text{47}\)
- Data.NSW, an online portal and central dataset catalogue which contains high value data sets for public release.\(^\text{48}\)
- OpenGov NSW, a searchable online repository for government publications which contains annual reports, strategic plans, guidelines, policy documents and GIPA related releases.\(^\text{49}\)

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GovDC to manage cloud-based technology needs and achieve economies of scale. It includes:
- two new data centres in Silverwater and Wollongong which will consolidate all 130 existing government data centres
- migration of all NSW agencies to GovDC servers by August 2017, and
- provision of cloud-based ITC systems for government.50

Some councils already publish reports on the OpenGov NSW website. The NSW ICT Strategy provides implementation guidance and a ready-made platform for State agencies to use to measure and minimise the reporting burden on councils.

5.6 Public notices

Councils are required by the Local Government Act 1993, the Local Government (General) Regulation 2005, the Environmental Planning and Assessment Act 1979, and the Environmental Planning and Assessment Regulation 2000 to use print media (including, in some cases, national papers) for advertising, exhibition and public notices rather than electronic media or a council website.

Requirements for newspaper advertisements may, in some cases, impose an excessive burden on councils. The need to provide notices in newspapers, and public notices generally, can be considered a balance between:
- informing parties who are affected by council’s decisions
- council transparency and accountability, and
- costs and delay relating to advertising.

Where the cost to councils outweighs benefits to the community from transparency, accountability and meeting stakeholder needs we recommend that councils be permitted to use alternative methods of providing notices such as mail-outs and notification on the council website.

Draft Recommendation

9 That the Department of Planning and Environment, including through the Office of Local Government, review public notice print media requirements in the Local Government Act 1993, the Local Government (General) Regulation 2005, the Environmental Planning and Assessment Act 1979, and the Environmental Planning and Assessment Regulation 2000 and, where the cost to councils of using print media exceeds the benefit to the community, remove print media requirements and allow online advertising, mail-outs and other forms of communication as alternatives.

5.6.1 Stakeholder comments

Stakeholders identified the following issues relating to advertising of public notices:

- Requirement for advertising, exhibition and public notices to use print rather than electronic media or council websites is an unnecessary burden.
- There are onerous advertising costs in using print media.\textsuperscript{51}

Councils suggested the following solutions:

- More flexible exhibition processes, timeframes and engagement methods (ie, alternatives to time-fixed printed copy exhibition).
- Transparency produced by common e-planning platforms may allow requirements to be removed.
- Allow advertising online via website and social media as an alternative to print media.\textsuperscript{52}

5.6.2 Background

The NSW Government supported removing mandatory newspaper advertising requirements for recruitment and tenders in its response to recommendations in both the ILGRP and LG Acts Taskforce reports.\textsuperscript{53}

The Box below provides examples of current legislative requirements to use print media.

\textsuperscript{51} LGNSW and Albury City Council, Issues Paper submissions, August 2015.
\textsuperscript{52} Wagga Wagga and Sydney workshops, 15 September 2015 and 8 October 2015; LGNSW, Issues Paper submission, August 2015; Blue Mountains City Council, Council of the City of Sydney, Rockdale City Council and Wagga Wagga City Council, questionnaire responses, August 2015.
Box 5.5  Examples of requirements to use print media

The *Local Government Act 1993* explicitly requires print media notifications for some council actions. Examples include:

- section 47 – granting leases, licences and other estates in respect of community land, with terms greater than five years
- section 47AA – granting leases for filming projects
- sections 55(4)(a) and 55(4)(b) - some requirements for tenderers to have responded to an advertisement for expressions of interest
- section 119E - advertising or notification of applications made in filming proposal
- section 348 - advertising of senior staff positions
- section 410 - alternative use of money raised by special rates or charges (ie, borrowing from internal funds)
- sections 644A 644B and 647- establishing, suspending or cancelling an alcohol-free zone
- section 710 - serving notices on a person, and
- section 715 - proposing to sell land.

Various regulations in the *Local Government (General) Regulation 2005*, section 79(1)(d) of the *Environmental Planning and Assessment Act 1979* and various regulations in the *Environmental Planning and Assessment Regulation 2000* require notices to be published in a newspaper.
6 Water and sewerage

In regional NSW, councils provide water supply and sewerage services to urban communities. There are over 100 council owned and operated Local Water Utilities (LWUs) providing these services to over 1.8 million people.

Stakeholders identified a range of planning, reporting and compliance burdens associated with regulatory arrangements for LWUs. They have also suggested that there is a need for broader review of this area, commenting that aspects are outdated, stifle innovation and lie outside the capacity of some LWUs.

Our draft recommendations in this area aim to:

- tailor the regulatory framework for LWUs to reflect the capacity of each utility
- allow optimal water resource planning at the catchment level, and
- reduce the reporting and auditing burden on LWUs by taking a more efficient, targeted and ‘whole-of-government’ approach.

We have also made a draft recommendation to address administrative and compliance burdens identified by councils with regulation of onsite sewage management systems.

Other burdens raised by councils on which we are not proposing to make recommendations are discussed in Appendix B, Table B.3. Some matters raised were deemed out of scope. These are listed in Appendix C.

6.1 Regulation of NSW Local Water Utilities by DPI Water

LWUs are regulated by the Department of Primary Industries – Water (DPI Water) with respect to natural resource water management, pricing and utility performance. Regulation of LWU pricing and performance occurs primarily through:

- the NSW Best-Practice Management of Water Supply and Sewerage (BPM) Framework, and
- the approval of LWU proposals to construct or extend a dam, water or sewage treatment work and for reuse of effluent and biosolids under section 60 of the Local Government Act 1993 (LG Act).
This current regulation of LWUs is overly prescriptive and unnecessarily burdensome. It differs from the outcomes-focused and risk-based regulatory regimes under which public water utilities\footnote{Sydney Water Corporation and Hunter Water Corporation.} and private water utilities\footnote{Licensed under the \textit{Water Industry Competition Act 2006}.} operate in NSW.

One of the reasons for the level of prescription of the current LWU regulatory regime was the need to support LWUs to improve their service delivery and compliance capacity. Stakeholders to this review recognised that DPI Water and its predecessors have made improvements. The NSW Auditor-General noted that:\footnote{\textit{NSW Auditor-General, Country Towns Water Supply and Sewerage Program: Department of Trade, Regional Infrastructure and Services – NSW Office of Water}, May 2015 p 4.}

\begin{quote}
Utilities’ services and efficiency has improved over the last twenty years...In June 2013, utilities’ overall compliance with the framework was 90 per cent compared to 46 per cent in June 2004.
\end{quote}

A number of reviews and inquiries since 2008 have recommended structural reform of NSW’s LWUs to ensure they have sufficient capacity to meet the regulatory objectives.\footnote{See Box 6.2 for a summary of relevant recommendations.} This structural reform has not occurred and the problems identified by these reviews continue.

Our draft recommendations aim to address the burdens identified by stakeholders in the current LWU regulatory regime and improve water resource planning. We have recommended that the NSW Government:

\begin{itemize}
\item Undertake central water planning. This would allow optimal water resource planning at the catchment level. It would address stakeholder concerns that the current requirements relating to preparation of an Integrated Water Cycle Management (IWCM) Strategy are costly, burdensome, and in some cases, not relevant to a LWU’s operations.
\item Enable LWUs with the capacity to manage their utilities to be regulated under the outcomes-focused and risk-based regime of the \textit{Water Industry Competition Act 2006}. The prescriptive arrangements under the BPM Framework and section 60 of the \textit{Local Government Act 1993} can continue to provide support for LWUs that require it.
\end{itemize}

By taking a risk-based approach that reflects the capacity of each LWU and aligns with regulatory arrangements for other water utilities in NSW, these draft recommendations would reduce the burdens identified by stakeholders and improve water resource planning.
Draft Recommendations

10 That the Department of Primary Industries Water (DPI Water) undertake central water planning for Local Water Utilities (LWUs) to ensure that water supply and demand options are considered in the context of catchments, replacing the water planning LWUs currently undertake individually through Integrated Water Cycle Management Strategies.

11 That the NSW Government enable LWUs with sufficient capacity to be regulated under the Water Industry Competition Act 2006 as an alternative to their current regulation under the Best-Practice Management of Water Supply and Sewerage Framework and section 60 of the Local Government Act 1993.

6.1.1 Stakeholder comment

Stakeholders identified that DPI Water’s regulation of LWUs is prescriptive, inflexible and outdated. They particularly noted the burdens LWUs experience in preparing Integrated Water Cycle Management Strategies and in the section 60 approval processes. Some stakeholders strongly argued for an overhaul of the governance framework for LWUs and for a principles- or outcome-based regulatory approach to replace the BPM Framework.

The Water Directorate – an association that comprises 97 LWUs around NSW, outlined its concerns as follows:58

The Water Directorate membership supports the need for reform of the regulation of local government and their utilities. We believe the current regulatory model is inconsistent in application, creates confusion regarding roles and responsibilities, and limits the ability of local council owned water utilities to deliver the best outcomes for the community.

Central NSW Councils (Centroc) echoed this call for reform, particularly in relation to the current compliance framework for LWUs:59

Without a doubt this is a burning platform that Centroc is eager to collaborate with the State to resolve.

Other stakeholder comments are summarised in the Box below.

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58 Water Directorate submission to IPART Issues Paper, August 2015, p 1.
59 Centroc submission to IPART Issues Paper, August 2015, p 12.
Box 6.1 Summary of stakeholder comments

Best practice management framework generally

- The State Government, in collaboration with Local Government should review the efficiency, benefits and costs associated with the current compliance framework for both the State Government and Local Water Utilities.

- The requirements within the BPM Framework should represent a whole of government approach and demonstrate alignment with the better regulation principles.

- DPI Water’s best practice guidance does not result in greatly improved outcomes for LWUs.

- The BPM Guidelines are outdated and confusing. A complete overhaul is required rather than the current methodology of adding or modifying without an assessment of the overall governance framework.

- The BPM Framework dictates what should happen state-wide without consideration of local differences. Councils should be able to adopt local variations where this provides a better outcome for the community.

Integrated Water Cycle Management (IWCM) Strategies

- There is strong concern about the relevance of the IWCM within the BPM Framework as related to timing, cost and response particularly when it is linked to funding approval under the Country Towns Water Supply and Sewerage Program.

- IWCM is complex, costly, prescriptive, and of limited benefit. It should be removed.

- IWCM planning (as described by the BPM) is of questionable value to communities that are not planning infrastructure upgrades.

- The 2014 IWCM Strategy Checklist and Strategic and Financial Planning checklist are far more complex than earlier guidelines. These requirements impose strain on limited resources, including financial analysis.

- Preparing an IWCM Strategy is a huge burden on council resources.

- LWUs engage consultants to prepare IWCM Strategies, contributing to the high cost - DPI Water should provide consultants or its own expertise and assistance to help LWUs prepare their Strategy.

Approvals under section 60 of the LG Act:

- Approval requirements should be reviewed against the better regulation principles to establish needs and objectives.

- The processes as set down by DPI Water are outdated. They do not allow for innovation and cause unnecessary delays.

- There are no outcome-based indicators that demonstrate that the process currently adds value or achieves the stated outcome.

Source: Various submissions to IPART, and comments from councils at Coffs Harbour and Wagga Wagga workshops.
6 Water and sewerage

6.1.2 Background

Water resource planning

LWUs currently undertake water planning through their IWCM Strategies, as required by the BPM Framework. The aim of this water planning is to provide secure, sustainable and affordable water services to a LWU’s customers.

Among other things, an IWCM Strategy identifies the best way for an LWU to deliver services to its customers over the following 30 years (the best-value 30-year IWCM scenario) and the strategy for achieving this on a triple bottom line basis. To identify the best-value IWCM scenario, each LWU is required to consider and test all available scenarios for delivering services. These broadly include both supply (infrastructure such as a dam or desalination plant) and demand (water conservation) solutions.

Stakeholder comments highlight that, in relation to water resource planning by LWUs through IWCM Strategies:

▼ LWUs do not have the in-house expertise to undertake this planning. Rather, most (and possibly all) LWUs engage consultants to prepare their IWCM Strategies at significant cost, and

▼ Many LWUs consider preparation of an IWCM Strategy as burdensome and, in some cases, not relevant to their operations.

Smaller LWUs typically have less capacity to undertake water resource planning and therefore feel these burdens more greatly than larger LWUs.

We consider that the current approach to water planning, within the boundaries of a LWU’s operations has significant limitations because these boundaries do not align with water catchment areas. Water planning could be more efficiently and effectively undertaken on a regional or catchment basis. A Regional Water Strategy approach could consider catchments holistically and determine the best way to balance supply and demand.

In some cases, regional infrastructure may be a more efficient way of securing water supply than localised infrastructure for each LWU. Efficiency gains might also be achieved by delivery efficiencies (e.g., replacing high evaporative creek distribution systems with pipelines). This sort of holistic planning should be done by DPI Water.

Currently DPI Water regulates LWUs’ water planning through IWCM Strategies. We recommend that the State undertakes this planning on a catchment basis.

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60 Triple bottom line is an accounting framework with three parts: social, environmental and financial.
The Metropolitan Water Directorate coordinates the water planning functions for both greater Sydney and the lower Hunter. This approach means that the planning is undertaken in a holistic manner, in consultation with the major water utilities such as Sydney Water, Hunter Water and WaterNSW. This approach has benefits in terms of:

- ensuring community expectations are met
- competition, and
- balancing supply and demand with scarce water resources.

Central water resource planning can present some challenges as it interacts with infrastructure delivery. Nevertheless, we consider that holistic planning is more efficient and preferable to the current LWU-based planning.

A Regional Water Planning Strategy approach would also allow an evaluation and rebalancing of LWU water entitlements. LWUs have water entitlements that were assigned by DPI Water under 10-year water sharing plans. These determine the rules for sharing the water resources of each catchment between water users and the environment. In some cases, the entitlement at the time of assignment represented a reasonably efficient volume of water for the LWU; and in other cases it provided LWUs with a significant excess. Population changes since water entitlements were assigned mean that some LWUs have even more excess water (because the population they supply has fallen) and in other areas there is increasing pressure on supply (because of population growth or increased demand).

A Regional Water Planning Strategy could identify those LWUs with too much water and those with not enough and rectify the balance. This would represent the most efficient way of securing and delivering water supply across a catchment.

**Utility performance (including section 60 approvals)**

Currently, regulation of utility performance is undertaken by DPI Water under the BPM Framework and section 60 of the LG Act.

LWUs require approval from the Minister for Primary Industries (through DPI Water) under section 60 of the LG Act for new or extended water or water treatment works. This approval process is intended to provide assurance to the LWU and the community that the infrastructure is fit for purpose, that it protects public health and safety and the environment, and that it provides a robust, cost-effective solution which avoids ‘gold-plating’.

Stakeholders raised concerns with the section 60 approval process, as outlined above. They consider the process is outdated, stifles innovation, causes delay and should be reviewed. These comments echo stakeholder concerns with the BPM Framework more generally.
The current regulation of LWU performance through prescriptive, ‘front-ended’ approval requirements and a heavy reliance on reporting, may have been necessary in the past because of the limited capacity of LWUs to efficiently deliver services and sustainably manage their utilities in compliance with health and environmental standards. As noted above, DPI Water and its predecessors have achieved significant improvements in this regard.

Many LWUs now have the capacity to manage themselves without this level of prescriptive regulation. We consider that LWUs who are assessed to have sufficient capacity could be regulated under the Water Industry Competition Act 2006 (WIC Act). LWUs regulated under the WIC Act would be exempt from approval requirements under section 60 of the LGA and most aspects of the BPM Framework. Therefore, they would be regulated primarily by IPART, rather than DPI Water.

DPI Water may still need to regulate aspects of these LWUs operations that are covered by the BPM Framework but not the WIC Act such as:

- Liquid trade waste regulation.
- Performance benchmarking.

In contrast with the current prescriptive regulation of LWUs under the BPM Framework and section 60 of the LGA, regulation under the WIC Act is characterised by:

- an outcomes-based approach, and
- a risk-based compliance regime, including exception-based compliance reporting and risk-based auditing.

The regulation of LWUs under the WIC Act can be tailored to provide the appropriate level of regulatory oversight for each LWU’s capacity.

**Reviews and reforms recommending structural reform**

A number of reviews and inquiries since 2008 have recommended structural reform of NSW’s LWUs to ensure they have sufficient capacity to meet the regulatory objectives. The relevant recommendations from these reviews are outlined in the Box below.
Box 6.2 Other reviews and recommendations for structural reform


This report recommended the (then) 104 LWUs be aggregated into 32 regional groups. It identified business sophistication and operating scale as the two major attributes required for future sustainability.\(^a\)

**Infrastructure Australia 2010 (prepared by AECOM) – Review of Regional Water Quality & Security**

AECOM recommended reform of the governance structure of regional water utilities in NSW and Queensland. Its preferred reform model involved transfer of local government water utility functions to government-owned Regional Water Corporations (as in Victoria and Tasmania).\(^b\)

**National Water Commission 2011 – *Urban water in Australia: future directions***

The National Water Commission (NWC) made a range of findings in relation to Australia’s urban water sector and recommendations for reform. In relation to regional and rural areas, the NWC recommended:

- Governments and service providers should undertake reforms in regional, rural and remote areas to ensure that there is sufficient organisational, financial, technical and managerial capacity to meet service delivery requirements and protect public health and the environment, particularly in New South Wales and Queensland.

The NWC argued that structural and institutional reform of local council service provision in NSW was urgently needed and that a range of models and transitional approaches may be appropriate.\(^c\)

**Productivity Commission 2011 – *Australia’s Urban Water Sector***

The Productivity Commission (PC) made a specific recommendation for the NSW and Queensland Governments to consider the merits of aggregation of regional water utilities, case-by-case, based on a range of factors. Where the expected benefits of horizontal aggregation do not outweigh the costs, the PC recommended that these governments consider the case for establishing regional alliances.\(^d\)

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\(^d\) Productivity Commission, *Australia’s Urban Water Sector*, October 2011, p LVII.
6.2 Best-Practice Management of Water Supply and Sewerage Framework – reporting and auditing

DPI Water currently regulates pricing and management of LWUs through the Best-Practice Management of Water Supply and Sewerage (BPM) Framework. This Framework is implemented through compulsory Guidelines. LWUs must comply with these Guidelines to be eligible for payment of a dividend from the surplus of their water supply or sewerage business and for financial assistance under the Country Towns Water Supply and Sewerage Program.

Stakeholders have identified reporting and auditing requirements under the BPM Framework that are onerous, inefficient, or involve duplication with other requirements.

We recommend DPI Water reduce the reporting and auditing burden on LWUs by taking a more efficient approach that:

- removes unnecessary reporting (ie, data that is not linked to a clear regulatory objective or not used by either LWUs or DPI Water for compliance or meaningful comparative purposes)
- achieves consistency with nationally-agreed performance measures for similar water utilities (ie, as required under the National Water Initiative)
- removes duplicative reporting (eg, similar data are currently provided to both DPI Water and the Environment Protection Authority (EPA))
- consolidates or streamlines all reporting (eg, aligning trade waste reporting with other LWU reporting to DPI Water), and
- adopts a risk-based approach to auditing.

To achieve these changes, DPI Water should review all performance measures reported by LWUs, in consultation with LWUs and their industry groups. It should also coordinate access to information that LWUs report to the EPA as a requirement of their Environment Protection Licences (EPLs). This could be achieved by the establishment of an EPA database from which DPI Water could extract information it requires. DPI Water currently has similar arrangements with NSW Health that could provide a model for greater information-sharing with the EPA.

Targeted and efficient performance reporting would achieve considerable cost savings for both LWUs and the State Government.

A risk-based auditing regime for LWUs that regularly pay a dividend to their council’s general fund would benefit those LWUs that have track records of strong audit results to justify less frequent auditing.
Our draft recommendation 11 listed above is for LWUs with sufficient capacity to be regulated under the WIC Act. We note that consistent performance reporting across all LWUs is important for benchmarking and should continue, where cost effective. Therefore the following recommendation would benefit all LWUs, irrespective of whether they move to regulation under the WIC Act.

Draft Recommendation

12 That DPI Water amend the Best-Practice Management of Water Supply and Sewerage Guidelines to:

- streamline the NSW Performance Monitoring System to ensure each performance measure reported is:
  - linked to a clear regulatory objective
  - used by either most Local Water Utilities (LWUs) or DPI Water for compliance or meaningful comparative purposes
  - not in excess of the performance measures required under the National Water Initiative, and
  - not duplicating information reported to other State agencies.

- reduce the number of performance measures and/or the frequency of reporting for small LWUs with fewer than 10,000 connections

- align trade waste reporting with other performance reporting, on a financial year basis, subject to consultation with LWUs, LGNSW and the Water Directorate, and

- implement a risk-based auditing regime for LWU wanting to pay a dividend to their council’s general fund.

6.2.1 Stakeholder comment

Through our consultation process, we received considerable feedback on the reporting burden on LWUs and possible solutions to address it. The concerns raised by stakeholders and the solutions they proposed are summarised in the Box below.
Box 6.3 Summary of stakeholder comments

Performance reporting:

- Reports are too complex and time consuming; reporting requirements are extreme and can relate to items that are unable to be measured.
- DPI Water’s benchmarking report for water businesses is compiled from over 640 questions (compared with less than 100 questions eight to ten years ago). While the report has valuable comparative information, it does not influence work programs.
- Reporting under the framework includes providing information on 700 questions that in part are duplicated under other reporting requirements. Completion takes a dedicated resource 12 weeks per annum at a cost of around $30,000.

Duplication in reporting to DPI Water and the EPA

- There is significant reporting duplication between EPA and DPI. Examples include: volume of effluent treated biosolids, sewage overflow reports and monitoring data.
- The DPI Water Annual Performance Report should be compared with the EPA Annual Return with consideration given to a single joint report, with each parameter only being reported once.

Trade waste reporting:

- The liquid trade waste reporting timeframe is different from other LWU reporting, on a calendar year basis rather than financial year. All reporting should be aligned on a financial year basis.

Audit of compliance for payment of dividend

- An audit of compliance may be appropriate for LWUs wanting to pay a one-off or initial dividend to council but is excessive for utilities that comply and pay a dividend each year.
- DPI Water should take a risk-based approach - LWUs that comply each year and pay a dividend each year should be assessed on previous independent audit.

Source: Various submissions to IPART, and comments from councils at Wagga Wagga workshop.

DPI Water strongly supports performance reporting by LWUs to:

- help them identify areas of under-performance which then become the focus of the LWU’s Action Plan to council for the following year, and
- demonstrate the outcomes of State investment in LWUs through the Country Towns Water Supply and Sewerage Program.\(^{61}\)

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\(^{61}\) The NSW Government provides financial assistance to LWUs for the provision of water and sewerage infrastructure through the $1.2 billion Country Towns Water Supply and Sewerage Program. The objective of the program is to eliminate the water and sewerage infrastructure backlog in urban areas of country NSW. It is scheduled to run until 2016-17.
It has agreed to undertake a comprehensive review of the NSW Performance Monitoring System, in consultation with stakeholders, to identify streamlining opportunities. It has already identified performance measures that could be removed in the area of water quality data that it can access from the NSW Health Drinking Water Database.

DPI Water also advised that it has no objection to aligning annual trade waste reporting with LWUs’ other reporting requirements (ie, on a financial year basis) and including it in the NSW Performance Monitoring System. It should consult all stakeholders on this proposal as part of its comprehensive review of performance reporting.

6.2.2 Background

Local Water Utility performance reporting

Under the BPM Framework, LWUs must annually report their water supply and sewerage performance measures. DPI Water maintains a web-based database for LWUs to report their data, from which it annually produces:

- NSW Water Supply and Sewerage Performance Monitoring Report that reports the overall performance of the 105 LWUs (and enables NSW to comply with the National Water Initiative)
- Water Supply and Sewerage NSW Benchmarking Report which presents the full suite of performance indicators and benchmarking data for all local water utilities, and
- a 2-page triple bottom line performance report for each LWU that is intended to enable the utility to prepare an annual Action Plan to council to identify emerging issues or areas of under-performance.

Performance monitoring and benchmarking are required under the National Water Initiative (NWI) – a Council of Australian Governments (COAG) policy for water reform, signed in 2004. NWI performance reporting is only required from utilities with greater than 10,000 connections, whereas performance reporting under NSW’s BPM Framework is required from all utilities.

Liquid trade waste reporting and regulation

The Best-Practice Management of Water Supply and Sewerage Guidelines (BPM Guidelines) require LWUs to:

- implement an appropriate liquid trade waste policy
- issue an approval under section 68 of the Local Government Act 1993 for each liquid trade waste discharger to its sewerage system, and
- implement best-practice sewerage and trade waste pricing,
These arrangements are set out in the *Liquid Trade Waste Regulation Guidelines*.

LWUs must not grant a liquid trade waste approval without concurrence from DPI Water. DPI Water authorises LWUs to assume concurrence according to the risk associated with the discharge or discharger, as follows:

- For low risk dischargers, LWUs are authorised to assume concurrence.
- For medium risk dischargers, LWUs with significant experience in liquid trade waste regulation are encouraged to apply to DPI Water for authorisation to assume concurrence. For LWUs without this experience, DPI Water must provide its concurrence to the LWU approval.
- For high risk dischargers, LWUs are not authorised to assume concurrence. DPI Water must provide its concurrence to the LWU approval.

Under the *Liquid Trade Waste Regulation Guidelines*, LWUs are required to provide an annual report to DPI Water, detailing discharges approved with assumed concurrence for the calendar year.

**Annual audit of compliance for payment of a dividend**

Under the BPM Guidelines, LWUs wanting to pay a dividend to their council’s general fund must obtain:

- an independent compliance audit report verifying that the LWU has demonstrated achievement of prescribed outcomes, and
- an independent financial audit report that verifies the water supply and/or sewerage Special Purpose Financial Reports are a true and accurate reflection of the business and that the overhead reallocation charge to these businesses is a fair and reasonable cost.

### 6.3 Onsite sewage management systems

Onsite sewage management systems (onsite systems) are sewage treatment and disposal facilities installed at premises that are not connected to a reticulated sewerage system (ie, generally in unsewered areas). These are typically household septic tanks and aerated wastewater treatment systems (AWTS) installed by the landowner.

Installation and operation of onsite systems are high risk activities, as systems which are not properly installed, maintained and operated can pose significant public health and environmental risks. To manage these risks, onsite systems are regulated by councils through approvals issued under section 68 of the LG Act that enable councils to set performance standards, related maintenance and reporting requirements.

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Councillors have identified administrative and compliance burdens associated with the regulation of onsite systems arising from the high administrative workload associated with AWTS and the varying quality of service reports from technicians who service these systems.

Issues associated with regulation of onsite systems were also raised in IPART’s previous review of Local government compliance and enforcement.64

We recommend the mandatory use of a standardised service report for technicians that service AWTS to address the administrative and compliance burdens on councils. NSW Health is best placed to determine a template for the service report, in consultation with councils, as it has an existing role in accrediting the design of AWTS. Councils would have the option to facilitate the online submission of service reports from technicians to further reduce administrative burdens on councils and technicians.

**Draft Recommendations**

13 That NSW Health determine a standardised service report template to be used by technicians undertaking quarterly servicing of aerated wastewater treatment systems, in consultation with councils.

14 That the Local Government (General) Regulation 2005 be amended to require service reports to be provided to councils using the template determined by NSW Health as a standard condition of approval to operate an aerated wastewater treatment system.

### 6.3.1 Stakeholder comments

Penrith City Council acknowledges that approving and inspecting onsite systems are appropriate regulatory functions for councils.65 However, Penrith and other council stakeholders have identified the administrative burdens associated with this regulatory function.66 Penrith estimated that its shortfall in cost recovery for this function in 2011-12 was $1.8 million.

Councils identified particular burdens in the high administrative workload associated with AWTS and the varying quality of service reports from technicians who service these systems.67

Councils identified that administrative burdens could be greatly reduced if service technicians used a standard AWTS reporting template and electronically submitted reports to council.68

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65 Penrith City Council submission to IPART Issues Paper, August 2015.
66 Penrith City Council submission to IPART Issues Paper, August 2015; Coffs Harbour workshop, 10 September 2015.
67 Coffs Harbour workshop, 10 September 2015 and The Hills Shire Council questionnaire response August 2015.
68 Coffs Harbour workshop, 10 September 2015.
One council suggested that the requirement for approvals to operate AWTS should be removed altogether, as these systems are already subject to quarterly servicing.69

6.3.2 Background

Regulatory responsibility for onsite systems

Councils have the primary regulatory role for licensing onsite systems. This role includes responsibility for approving onsite systems, monitoring their ongoing performance and keeping an up-to-date register of all onsite systems in their area.70

The LG Act allows councils to charge a fee for approval applications or renewals, and for undertaking inspections.71

NSW Health is responsible for accrediting the design of onsite systems generally available for purchase by households (ie, premises normally occupied by no more than 10 persons).72 NSW Health Certificates of Accreditation (applying to the onsite systems themselves) require periodic servicing for certain systems which pose higher risks due to more complicated technology. For example, quarterly servicing by a technician is required for AWTS.73 The servicing can be undertaken either by a representative of the system manufacturer / distributor, or a service technician “acceptable” to the council. Councils impose this servicing requirement on landowners as a condition of section 68 approvals to operate onsite systems.74

As councils use the approval to operate an AWTS to impose a quarterly servicing requirement, this approval is an essential element in managing the higher risks associated with these systems. For this reason, we do not support The Hills Shire Council’s suggestion that the requirement for approval to operate an AWTS should be removed.75

The Table below outlines the regulatory framework for the majority of onsite systems used by households.

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69 The Hills Shire Council, questionnaire response, August 2015.
70 Local Government Act 1993, sections 68 and 113.
71 Local Government Act 1993, sections 80 and 608.
72 Local Government (General) Regulation 2005, clauses 40-41.
74 For example, Port Macquarie-Hastings Council imposes the condition in the section 68 approval to operate an onsite system: Email to IPART from Port Macquarie-Hastings Council, 6 September 2013.
75 The Hills Shire Council, questionnaire response, August 2015.
### Table 6.1  Regulatory process for onsite systems

<table>
<thead>
<tr>
<th>Regulatory step</th>
<th>Responsible body</th>
<th>Low risk technology</th>
<th>High risk technology (eg, AWTS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accreditation (of system design and manufacture)</td>
<td>NSW Health</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>s68 Approval to Install issued to landowner</td>
<td>Council</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>One-off Inspection</td>
<td>Council</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(ensuring system installed in accordance with approval)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>s68 Approval to Operate issued to landowner</td>
<td>Council</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(ongoing approval renewed at intervals determined by council)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Periodic servicing of system</td>
<td>Service technician</td>
<td>X</td>
<td>✓</td>
</tr>
<tr>
<td>Periodic inspections of system (to ensure system continuing to operate properly)</td>
<td>Council</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

\(^{a}\)  *Local Government (General) Regulation 2005, clause 34.*

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**The Office of Local Government (OLG)/** has an advisory role in this area. It previously developed guidance material for councils and onsite system operators.\(^{76}\) This material is now 15 years old and should be updated.

### Servicing requirements for aerated wastewater management systems (AWTS)

The administrative burdens associated with service reports for AWTS that councils identified in this review are related to issues raised in our previous review, including:

- the variable quality of services provided by AWTS technicians, and
- a lack of standardised information in service reports.

The issues from our previous review are outlined in the Box below.

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**Box 6.4  AWTS servicing - issues from previous IPART review**

**Variable service quality**

Councils indicated the quality of contractor services is variable because there is no minimum requirement for technical training or knowledge to undertake services. There is no licencing or accreditation scheme for service contractors, to the detriment of system operators, who remain liable for any failures to comply with the conditions of the approval.

Where contractors find issues or system faults, there can be limited incentives for documenting them in service reports, as the contractor is engaged and paid by the system operator. The service contractor could lose a revenue stream if operators prefer to look for “a more obliging service provider”. Some service contractors also undertake ‘tick and flick’ servicing, where the actual system is not checked or the service contractor does not even access the property on which the system is situated. These practices can heighten the public health risk from potential system failure.

Councils currently can determine the “acceptability” of service contractors in their area by setting minimum criteria. Any service contractors operating in their area can then apply to the council for inclusion on their list of acceptable service contractors provided they meet the criteria. Some councils have formed regional groups to share knowledge of contractors and to address issues with variable quality services (for example, the Septic Tank Action Group (STAG) in the Hunter). STAG has determined “acceptability” criteria as a group, in order to have a consistent, high standard for service contractors on a regional basis. This enhances consistency across council boundaries and raises the quality of services undertaken.

**Standardised service reporting**

Service contractors are to provide a copy of the service report to the system operator and the council (as well as retaining a copy for themselves). There is currently no standard service report for contractors to use. As a result, the information provided can be highly variable and inconsistent. Stakeholders have indicated that the interpretation of forms and data provided can be a time-consuming and expensive process. Where key information required to assess risk is missing, councils are also more limited in their ability to proactively manage public health challenges associated with onsite systems. This leads to additional resource pressures on councils, as it is estimated that some councils could deal with more than 16,000 reports per year.

In 2012, the Domestic Wastewater Inquiry recommended that Fair Trading or the OLG develop a common reporting standard and template to be submitted through a State Government electronic portal and that the reports should be filed on a common database that is accessible by all councils. Some councils or groups of councils have developed such a template. Figure 6.1 below is an example developed by the Southern NSW Onsite System Special Interest Group.

We note that despite efforts by some regional council groups to address these issues, they remain largely unresolved across NSW. The Domestic Wastewater Inquiry recommended that a formal licensing system be developed for installation and maintenance of onsite sewage management systems and that industry oversight be referred to NSW Fair Trading. This recommendation has not been implemented.

We consider that given NSW Health’s existing role in accrediting the design of onsite systems and imposing servicing requirements through these accreditations, it is best placed to determine a standardised reporting template for AWTS service technicians. Use of the standardised reporting template should then be mandated through a standard condition of approval imposed through an amendment to the Local Government (General) Regulation 2005.

An electronic format of the finalised template should be developed by councils to allow for electronic submission of service reports to further ease the regulatory burden.

To address concerns about the variable quality of service provided by AWTS technicians, NSW Health could also determine minimum qualifications or experience for these technicians to undertake services of AWTSs. Councils could then impose requirements in the approval instrument that only technicians meeting these minimum requirements may undertake services. This would be a lighter handed regulatory approach from the licensing regime recommended by the Domestic Wastewater Inquiry. Nevertheless, we have not made a draft recommendation in relation to minimum qualifications for AWTS service technicians. It is unclear from stakeholder comments to this review that regulatory intervention in this area is required beyond standardising the AWTS reporting template.

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78 The Southern NSW Onsite System Special Interest Group is made up of many southern council environmental health officers, including Eurobodalla Shire Council and Bega Valley Shire Council.

79 Legislative Assembly, Committee on Environment and Regulation, Inquiry into the regulation of Domestic Wastewater, November 2012, (Domestic Wastewater Inquiry Report), p 45.
Other administrative burdens associated with onsite system approvals

Two further concerns were raised by councils in relation to onsite systems:

- the burden of issuing new approvals to operate (or the inability to transfer approvals) when properties with onsite systems are sold, and
- the administrative workload associated with requiring landowners to obtain both an approval to install and an approval to operate onsite systems.

We discuss these issues in Appendix B, Table B.10.

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80 Coffs Harbour workshop, 10 September 2015.
81 Penrith City Council submission, August 2015 and Coffs Harbour workshop, 10 September 2015.
**Figure 6.1  Example of a template for aerated system service reports**

<table>
<thead>
<tr>
<th><strong>1. Septic tank</strong></th>
<th><strong>Condition</strong></th>
<th><strong>4. Irrigation Area</strong></th>
<th><strong>Condition</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Septic tank condition</td>
<td>Inline filter check</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Square junctions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sludge depth</td>
<td>mm</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deoxygen required</td>
<td>Y</td>
<td>N</td>
<td>Working (number)</td>
</tr>
<tr>
<td>Scum depth</td>
<td>mm</td>
<td></td>
<td>Subsurface</td>
</tr>
<tr>
<td>Outlet filter</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**2. Treatment tank**

<table>
<thead>
<tr>
<th><strong>5. General</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Air valves working</td>
</tr>
<tr>
<td>Check &amp; adjust Air supply</td>
</tr>
<tr>
<td>Scum in clarifier</td>
</tr>
<tr>
<td>Skimmer working</td>
</tr>
</tbody>
</table>

**3. Electronic components**

<table>
<thead>
<tr>
<th><strong>5. Comments/Recommendations</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Chlorine Concentration</td>
</tr>
<tr>
<td>Chlorine test</td>
</tr>
<tr>
<td>Dissolved Oxygen test</td>
</tr>
<tr>
<td>Chlorine tablets remaining</td>
</tr>
<tr>
<td>Chlorine tablets added</td>
</tr>
<tr>
<td>Flow orifice check</td>
</tr>
</tbody>
</table>

**Source:** Information provided to IPART from Eurobodalla Shire Council, 18 September 2013.
Local government has a long-standing, central role in planning regulation. This role was identified by numerous councils, and other broader interest groups, as involving significant regulatory burdens on councils. The key reporting, planning or compliance burdens identified by councils related to:

- the development approval process
- section 149 planning certificates
- State agency referrals in relation to the Integrated Development Assessment (IDA) process and assessment of development applications (DAs)
- the Gateway process for making or amending Local Environmental Plans (LEPs)
- processing payments for the Planning Reform Fund (PRF), and
- various reports required to be provided to the Department of Planning and Environment (DPE) and the Australian Bureau of Statistics (ABS).

Our draft recommendations would:

- institute streamlined and automated reporting to DPE and ABS
- harness DPE’s ePlanning program to automate payments, provide planning certificates and streamline applications
- institute a ‘one-stop shop’ approach for agency referrals in relation to LEP, IDA and DA assessment processes, and
- encourage the development and use of standardised development consent conditions.

This would reduce the reporting burden, regulatory costs and delays for councils. It would also reduce costs and delays in the planning system.

Other burdens raised by councils on which we are not proposing to make formal recommendations are discussed in Appendix B, Table B.4.
7.1 Reporting to the Department of Planning and Environment

Councils are required to provide a range of information to DPE, including:

- The number of DAs and complying development certificates (CDCs) determined by councils each year for DPE’s Local Development Performance Monitoring (LDPM)\(^\text{82}\).
- The residential housing activity undertaken each year in Metro Sydney, the Central Coast and the Illawarra for DPE’s Housing Monitor\(^\text{83}\).
- The number of State Environmental Planning Policy (Affordable Rental Housing) 2009 category developments councils have in their area each year, and the number of new affordable rental housing dwellings provided by the developments (Affordable Rental Housing).
- The number each quarter of developments approved by councils with variations to the development standards set in State Environmental Planning Policy No 1 – Development Standards or similar provision under a council’s Local Environmental Plan (SEPP 1 variations)\(^\text{84}\).
- An annual list of public disclosures of political donations or gifts (valued greater than $1,000) made at the time a DA is made or submissions on a DA are made (Political donations).

According to councils, this reporting imposes unnecessary burdens by:

- requiring duplicate data to be provided to DPE and ABS
- failing to automate the collection of the data (significant time is involved in providing the data in the Excel templates provided by DPE)
- requiring some data too frequently (ie, quarterly)
- failing to obtain data from other available sources, such as court appeals data from the Land and Environment Court, and
- failing to use or publish the data (it is often unclear why the data is collected).


We recommend changes to reduce the reporting burden on councils by:

- Removing duplicative reporting requirements (ie, similar data on building approvals is currently provided to both DPE and ABS) by instituting the central collection and data sharing model the ABS and Victorian Government are using (which is also currently being piloted in Western Australia).\(^{85}\)

- Consolidating and streamlining all reporting requirements (ie, LDPM, Housing Monitor, SEPP 1 variations and Affordable Rental Housing) into one suite of data. We are satisfied there is value in DPE collecting and publishing data in relation to these existing reports, but not in relation to Political donations.

- Upgrading council software systems to automate the collection of data from councils as part of DPE’s ePlanning program.

- Publishing Affordable Rental Housing and SEPP 1 variations data to maximise the utility of the data.

- Obtaining court appeals data directly from the Land & Environment Court, subject to reaching agreement with the Court. This would also require agreement on modifications to the appeal outcomes data the Court publishes to meet DPE’s purposes.\(^{86}\)

- Removing unnecessary reporting, that is, data that is not used or published, or that does not serve a public policy objective (ie, reporting of Political donations).

These changes would provide considerable cost savings to councils. They would also result in more coherent, consistent information outputs and more accessible ‘live’ data.

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Draft Recommendation

15 That the Department of Planning and Environment (DPE):

- Implement a data sharing model with the Australian Bureau of Statistics in relation to building approvals in NSW.
- Introduce a consolidated data request of councils for the purposes of the Local Development Performance Monitoring (LDPM), Housing Monitor, State Environmental Planning Policy (Affordable Rental Housing) 2009 (Affordable Rental Housing) and State Environmental Planning Policy No 1 – Development Standards (SEPP 1 variations).
- Fund an upgrade of councils’ software systems to automate the collection of data from councils for the purposes of the LDPM, Housing Monitor, Affordable Rental Housing and SEPP 1 variations.
- Publish the data collected from councils on Affordable Rental Housing and SEPP 1 variations data.
- Seek agreement with the Land & Environment Court to obtain appeal data directly from the Court.
- Remove the administrative requirement for councils to report to DPE on political donations or gifts under section 147 of the Environmental Planning & Assessment Act 1979.

7.1.1 Stakeholder comment

Through our consultation processes we received many comments on the reporting burdens imposed by DPE and possible solutions to address them. The burdens and proposed measures to address them are summarised in Box 7.1 and Box 7.2 below.
Box 7.1 Summary of council concerns

**Local Development Performance Monitoring (LDPM):**
- Onerous reporting requirement (significant time & resources), consisting of over 140 measures.
- Duplication of data reported monthly to ABS and annually to DPE.
- Duplication of reporting of planning appeals to DPE and in council's Annual Report.
- Lack of automation or access to 'live' data.

**SEPP 1 variations reporting:**
- Onerous, and quarterly reporting excessive.
- Already reporting in the LDPM, keeping public register and publishing on council website.
- Data not analysed or published or used to improve the system.

**Affordable Rental Housing reporting:**
- Time-consuming.
- Duplication with ABS data.
- Unclear what the data is used for.

**Housing Monitor:**
- Some duplicate data is required in the Housing Monitor, LDPM, Affordable Rental Housing and SEPP 1 variations reporting.

**Political donations reporting:**
- Time-consuming, unnecessary, what is the utility of this reporting?

**Source:** Various submissions and questionnaires to IPART, and comments from councils at Coffs Harbour, Wagga Wagga and Dubbo workshops.
Box 7.2  Summary of solutions proposed by councils

**Local Development Performance Monitoring (LDPM):**
- DPE should pull out the data it needs from the ABS monthly reporting or ABS should source its information from DPE.
- Streamline, reduce or remove unnecessary reporting requirements and coordinate and share data with federal and state agencies.
- DPE should directly source planning appeal results from the Land & Environment Court database.
- Develop an automated system which provides ‘live’ data as part of the ePlanning program.
- Should be one report to DPE which includes LDPM, Affordable Rental Housing, SEPP 1 variations data, and Housing Monitor.
- Standardise one set of data reported centrally, which each agency can access to obtain the data it needs.

**SEPP 1 variations reporting:**
- Only report by exception or report annually through the LDPM.
- Remove requirement.
- Random auditing would be more effective.

**Affordable Rental Housing reporting:**
- Collect data via an automated system.
- Remove requirement or incorporate into the LDPM.

**Housing Monitor:**
- If DPE had access to the ‘live’ data of councils across the State, the need to generate specific Housing Monitor, LDPM, Affordable Rental Housing and SEPP 1 variation reports would be removed and the data would be more readily delivered to the community.

**Political donations reporting:**
- Should be included in one reporting mechanism for all reports to DPE.

*Source:* Various submissions and questionnaires to IPART, and comments from councils at Coffs Harbour, Wagga Wagga and Dubbo workshops.
The Urban Taskforce also proposed the following solution:

With the NSW government investing $20 million in the 2015-2016 budget for the development of E-planning tools to streamline planning processes, there is significant potential to simplify the assessment and reporting system. As part of the development of an online planning system there is scope for the real time collection of data that gives immediate snapshots of a council's performance in delivering housing and measurable [sic]. This can only occur with a centralised reporting system.87

7.1.2 Background

Duplicative reporting

Currently there is duplicate reporting to DPE in relation to the LDPM, Housing Monitor and Affordable Rental Housing, and to the ABS in relation to the monthly Building Approvals, Australia (cat. No. 8731.0) publication. Council reports to DPE and ABS are summarised in Box 7.3 below.

87 Urban Taskforce Australia submission to IPART Issues Paper, 14 August 2015, p 2.
Box 7.3 Council reports to DPE and ABS

Local Development Performance Monitoring (LDPM)

This annual report to DPE provides information on developments determined by councils (as well as by private certifiers and joint regional planning panels). In particular, it reports on:

- the number of DAs and CDCs determined, and
- the mean and median time taken for councils to approve DAs (gross and net time ie, minus the days taken for ‘stop-the-clock’ and referrals to State agencies).\(^a\)

Housing Monitor

This information on residential housing activity in Metro Sydney, the Central Coast and the Illawarra is provided to DPE on a monthly and quarterly basis. The monitors contain information on:

- the total number of dwellings approved and completed
- where dwellings are being approved and built
- the types of dwellings that are being built, and
- how much land is available for future housing development.\(^b\)

Affordable Rental Housing

Councils are asked to provide annual data to DPE on the number of Affordable Rental Housing category developments they have in their area. Councils submit a ‘nil’ return if they have no such developments.\(^c\)

Building Approvals, Australia (cat. No. 8731.0)

The ABS obtains monthly data on building approvals from councils and other approval authorities in NSW to produce the monthly Building Approvals, Australia (cat. No. 8731.0) publication. This publication contains estimates of the number and value of dwellings approved by building type and geography.\(^d\)

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The value of the data provided in the LDPM was supported by a number of councils and broader stakeholder groups. According to the Housing Industry Association (HIA):

HIA and other industry stakeholders find this information useful and strongly support the continuation of this process, which is paramount in benchmarking council’s performance across the State...Any increase in performance by councils to determine, in a timely manner, rezoning and development proposals inevitably has a positive economic outcome that flows back to the building and development industry.88

According to the ABS, the Building Approvals publication is “a leading economic indicator of investment and employment in the construction industry, as well as one of the few potential measures of housing supply available between the five yearly census conducted by the ABS”.89

The ABS is aware that the data collection model currently used is resulting in duplicative reporting by councils throughout Australia, as State government agencies require councils to provide similar building approvals information. However, the ABS is prevented from sharing data with State agencies because of the protections contained in the Census & Statistics Act 1905 (Cth). As a result, the current collection model is burdensome on councils and represents a duplication of work across the whole of government.90

**Central collection and data sharing model**

The ABS has implemented a central collection and data sharing model in Victoria (which is also currently being piloted in WA), where the State Government has agreed to centrally collect building approval data which meets the needs of the ABS and State agencies. The State can then share the data with the ABS (or other users) via a Memorandum of Understanding or similar arrangement.91

According to the ABS, the benefits of this model include:

- reduction in the reporting burden faced by local government and other approval authorities, because of removal of multiple reporting requirements
- increased data coherence as information outputs are based on the same source data
- cost savings & increased efficiency across whole of government
- increased data accessibility, because the data would not be collected under an act which precludes wider dissemination
- access to ‘live’ data, afforded by technologies used to collect and disseminate data by the central agency.92

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88  HIA submission to IPART Issues Paper, 14 August 2015, p 1.
90  Ibid.
92  Ibid.
To date, the ABS has discussed this model with key NSW Government stakeholders.\textsuperscript{93}

Implementing the model in NSW would significantly reduce the reporting burden on councils. As suggested by the ABS, we consider this would result in cost savings to councils, as well as increasing the coherence of information outputs.

### Streamlining reporting

Currently councils provide separate reports to DPE, and there is some duplication of data provided in relation to the LDPM and Housing Monitor. There is potential to further reduce the burden of reporting on councils by streamlining data requirements. This could be achieved by incorporating into a single suite all data required from councils (ie, one set of data requirements for the purposes of the LDPM, Housing Monitor, Affordable Rental Housing and SEPP 1 variations).

### Automating data collection

Currently, DPE provides an Excel spreadsheet template for councils to enter required data for the LDPM, Housing Monitor, Affordable Rental Housing, SEPP 1 variations and Political donations. DPE funded upgrades to councils’ software systems to enable a degree of automation in the extraction of LDPM data from councils’ property information systems.\textsuperscript{94}

As part of a national electronic development assessment system (eDA) initiative, DPE in partnership with Local Government NSW, have successfully rolled out the Electronic Housing Code\textsuperscript{95}, with the majority of councils now using the system.\textsuperscript{96} The Electronic Housing Code is an online facility for electronic lodgement of CDCs. This required an upgrade to council software systems.

\begin{flushleft}
\textsuperscript{93} Ibid.
\textsuperscript{94} Emails to IPART from DPE, 13 October and 14 December 2015.
\textsuperscript{95} Information on this project can be found at http://www.ehc.nsw.gov.au/TheEHCpilotproject.aspx, accessed on 26 November 2015.
\textsuperscript{96} The list of 125 councils that are offering the Electronic Housing Code can be found at http://www.ehc.nsw.gov.au/Home.aspx, accessed on 26 November 2015.
\end{flushleft}
Further automation of data collected by DPE for the LDPM, Housing Monitor, Affordable Rental Housing and SEPP 1 variations could be possible through upgrades to council software systems. As suggested by stakeholders, this could be achieved as part of DPE’s ePlanning program. Automation or ‘live’ data would have more substantial benefits in reducing the reporting burden on councils and providing better access to data for the benefit of all stakeholders.

Data available from existing sources

Another inefficient element in the present data collection system is the requirement that councils, rather than the Land & Environment Court, provide court appeal data to DPE. From our review of DPE’s reporting template and the appeal outcomes data currently published by the Court, it would appear that the appeal outcomes data would need to be modified for DPE’s purposes.

Unnecessary reporting

Councils queried the value of reporting data to DPE in relation to SEPP 1 variations, Affordable Rental Housing and Political donations. Box 7.4 below summarises these reports.
Box 7.4 SEPP 1 variations, Affordable Rental Housing and Political donations reporting

SEPP 1 variations
When councils approve developments that are not in accordance with the development standards set in SEPP 1 or similar provision under their Local Environmental Plans (LEPs), they must report these variations to DPE on a quarterly basis. DPE must give its concurrence to DAs with variations of greater than 10% to development standards, and the full council must determine such DAs (in all other cases DPE’s concurrence may be assumed).a

Affordable Rental Housing
The aim of State Environmental Planning Policy (Affordable Rental Housing) 2009 is to encourage the development of new affordable housing and the maintenance of existing affordable housing. The policy covers housing types including villas, townhouses and apartments that contain an affordable rental housing component, along with secondary dwellings (eg, granny flats), new generation boarding houses, group homes, social housing and supportive accommodation. Councils are asked to provide annual data to DPE on the number of Affordable Rental Housing category developments they have in their area.b

Political donations
Under section 147 of the Environmental Planning and Assessment Act 1979 (EP&A Act), a person is required to publicly disclose any reportable political donations or gifts (ie, valued greater than $1,000) at the time a development application is made or submissions on an application are made. Under section 147(12) of the EP&A Act, councils are required to make disclosures of reportable political donations and gifts available to the public on, or in accordance with arrangements notified on, their websites within 14 days after the disclosure is made. Councils are also required to annually report all section 147 disclosures to DPE.

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SEPP 1 variations and Affordable Rental Housing

DPE does not publish the SEPP 1 variations data provided by councils. However, councils must maintain a public register of SEPP 1 variations on their websites.\(^97\) DPE uses this data to understand what development standards are being varied and whether the assumed DPE concurrence is being used as intended. It enables DPE and councils to determine whether development standards are appropriate or whether changes are required.\(^98\) According to DPE, for the 2013-14 period, approximately 3.18% of DAs required variation to development standards. More than 100 councils reported one or fewer variations per quarter, and only ten councils reported more than ten variations per quarter.\(^99\)

In our view, collecting data on variations to development standards would appear reasonable given the rationale for the requirement (ie, to gauge whether existing development standards are appropriate) and the percentage of variations currently reported.

Affordable Rental Housing data is not required to be provided under legislation or formal administrative requirements. The data is not published, so councils obtain no value from reporting on this data. However, DPE advises that the data is used internally for policy development.\(^100\)

The burden of reporting SEPP 1 variations and Affordable Rental Housing would be considerably lessened if it formed part of a consolidated suite of data provided by councils and if the collection of this data were automated, as discussed above. If DPE collects this data, DPE should also publish it to maximise its utility. If the data is published by DPE, councils should no longer be required to maintain a separate register of SEPP 1 variations on their websites.


\(^{98}\) Ibid.

\(^{99}\) Information provided to IPART from DPE, 19 October and 14 December 2015.

\(^{100}\) Information provided to IPART from DPE, 19 October 2015.
Political donations reporting

Political donations disclosure data under section 147 of the EP&A Act is not required to be provided under legislation or formal administrative requirements.\(^{101}\) This data is not published by DPE. From a desktop review of several council websites, we could not find any councils that currently make section 147 disclosures available to the public on their websites. One council website we reviewed has a link to an Access to Information Guideline. This document includes section 147 political disclosures in the list of information that is available to be requested.\(^ {102}\)

DPE’s website enables public access to section 147 disclosures associated with State significant development applications. They are available through the relevant project page on the website’s Major Project Register.\(^ {103}\)

By way of contrast, political donations disclosures under section 328A of the Local Government Act 1993 can be easily located and viewed on the council websites we reviewed. These disclosures are lodged by Councillors with the NSW Electoral Commission. The council websites we reviewed listed in their ‘register’ sections a Register of current declarations of disclosures of political donations, with a direct link to the Electoral Commission’s website where these disclosures are published.\(^ {104}\)

In our view, it is necessary to maintain transparency around these political donations and gifts. This is not currently being achieved because DPE do not publish the disclosures data provided by councils and not all councils are publishing these disclosures on their websites, or in accordance with easily accessible arrangements notified on their websites. In our view, this transparency should be achieved through the existing obligation under section 147(12) of the EP&A Act on councils (and DPE) to publish these disclosures on, or in accordance with arrangements notified on, their websites. The requirement to report these disclosures annually to DPE should be removed, given that the requirement has no legislative or formal basis and the data is not used by DPE.


If our recommendation to remove this reporting requirement is adopted by DPE, there would be merit in reminding councils of their existing obligation under section 147(12) of the EP&A Act at the time this requirement is removed. To comply with this requirement, section 147 disclosures would need to be publicly accessible within 14 days of the disclosure being made, easily accessible from council websites and free of charge.

### 7.2 ePlanning and planning certificates

Councils currently undertake the following activities:

- collect and process the Planning Reform Fund (PRF) fees in relation to development applications
- provide planning certificates to applicants (in accordance with sections 149(2) and 149(5) of the EP&A Act), and
- process DA and construction certificate (CC) application forms.

According to councils, these activities impose unnecessary burdens as a result of the:

- time taken to process and provide the PRF fees, the monthly PRF Return, and the Annual Audit Certification to DPE
- lack of clarity and consistency in the information to be included in planning certificates
- lack of timely notification of legislative changes impacting planning certificates, and
- duplicate information required in DA and CC application forms.

We recommend that DPE incorporates these council activities into its ePlanning program to remove the administrative burden on councils. Providing these services online through the NSW Planning Portal would be more efficient for councils and applicants, reducing costs and delays in the planning system.

In addition, centrally providing information in a planning certificate in accordance with section 149(2) of the EP&A Act and clarifying what information is to be provided by councils in accordance with section 149(5) of the EP&A Act would improve the accessibility, consistency and quality of information provided.

**Draft Recommendations**

16 That the *Environmental Planning and Assessment Act 1979* be amended to enable zoning and development standards information under section 149(2) of the *Environmental Planning and Assessment Act 1979* to be provided through the NSW Planning Portal.
17 That the *Environmental Planning and Assessment Regulation 2000* be amended to specify the information that can be provided by councils in accordance with section 149(5) of the *Environmental Planning & Assessment Act 1979*.

18 That DPE amend the NSW Planning Portal to provide for online:

- payment of fees and charges by applicants and for the Planning Reform Fund fee to then be automatically directed to DPE
- zoning and development standards information under section 149(2) of the *Environmental Planning & Assessment Act 1979*
- joint applications for development approvals and construction certificates, and
- information under section 149(5) of the *Environmental Planning & Assessment Act 1979* to be accessible via a link to council websites.

### 7.2.1 Stakeholder comments

**PRF fees**

Many councils commented on the unnecessary and costly administrative and reporting burden imposed through processing PRF fees. The concerns raised by councils and measures to address these burdens are summarised in Box 7.5 below.

**Box 7.5 PRF fees**

**Council concerns:**

- The $5 per DA fee received by councils to cover the administrative costs of collecting, processing, reporting and forwarding the PRF fees to DPE should be more in line with the actual cost to council.
- The time taken to process the PRF fees, complete the monthly PRF Return and Annual Audit Certification to DPE is excessive.

**Solutions proposed by councils:**

- Revise and increase the $5 fee to councils to offset the costs of complying with these requirements.
- Payment of the PRF fee should be directly to DPE.
- Replace the Annual Audit Certification Statement with an assessment of council’s controls and systems in place to provide comfort that the returns are accurate.

**Sources:** Various submissions and questionnaires to IPART, and comments from councils at Coffs Harbour and Sydney workshops.
Section 149 planning certificates

Councils also commented on the compliance burdens imposed in relation to providing section 149 planning certificates to property owners. The concerns raised by councils and measures to address these burdens are summarised in Box 7.6 below.

**Box 7.6 Planning certificates**

**Council concerns:**
- Lack of clarity and consistency in the information included in the certificates.
- There is a multiplicity of information derived from State planning provisions that needs to be included in the certificates.
- Failure to notify changes to legislation impacting certificates in a timely, comprehensive manner.
- Costly to produce certificates.

**Solutions proposed by councils:**
- Simplify and clarify the information required in certificates.
- Ensure timely and comprehensive notification of legislative changes impacting certificates.
- Zoning and planning certificates should be from a central State Government portal similar to the Victorian model – this should be part of the ePlanning journey.

**Sources:** Various submissions and questionnaires to IPART.

Duplicate DA/CC application forms

Councils raised the issue of DA/CC forms collecting the same or duplicate information in our Wagga Wagga workshop. There is also no consistency amongst councils in the DA forms they use. According to The Hills Shire Council, in Queensland there is a standard DA form used across the State for integrated development assessments.\(^{105}\) This issue may seem a relatively small matter in itself, but as discussed in our Systemic issues Chapter 5, it adds to the cumulative burden on councils of multiple reporting, planning and compliance requirements.

\(^{105}\) The Hills Shire Council, questionnaire response, August 2015.
7.2.2 Background

PRF fees

The PRF helps fund planning reforms and helps councils to deliver key strategic planning projects in their local area. The PRF is funded by the PRF fee, which is the fee that councils are required to pay to DPE when they receive a DA with an estimated value greater than $50,000 and is calculated as a percentage of the estimated development application value. Councils are required to remit funds monthly and report their PRF returns to DPE through an Annual Audit Certification Statement.106

According to Campbelltown City Council, the time taken to complete data returns is excessive and involves:

- Reconciling the payments to [the] development cost
- Reconciliation of quantity surveyors estimates with payments made and the amount due to PlanFirst [ie, PRF] less the $5 fee retained by Council
- [Providing] a full list of DAs lodged for the month
- Providing an annual attestation to the accuracy and completeness of the calculation, reporting and remittance of Planning Reform Fund fees in accordance with extensive testing requirements of the audit procedure and checklist.107

Councils are also a collection agent for the Long Service Levy (LSL). This is discussed in Appendix B, Table B.4, item 2 of this report. The LSL must be paid by the proponent of building work (ie, property owner) before a CC or CDC can be issued.108 By way of contrast, councils:

- are paid $18 per payment processed109
- report only CCs and CDCs that attract the LSL (not all CCs and CDCs)110, and
- do not have a similar ‘audit’ process to that required for the PRF111.

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109 Information provided to IPART from the Long Service Corporation, 9 November 2015.
110 Cootamundra Shire Council submission to IPART Issues Paper, 14 August 2015, p 2.
111 Information provided to IPART from the Long Service Corporation, 8 January 2016. The Long Service Corporation undertakes independent audits of councils on a periodic basis, using existing records and reports.
DPE is currently implementing an ePlanning program which, in time, will enable all DAs to be lodged by applicants and tracked through the NSW Planning Portal. The ePlanning program will enable a range of electronic planning services to be performed, and is also anticipated to include payment of relevant fees and charges.

In order to alleviate this burden, it would be possible to impose less onerous requirements on councils in relation to processing PRF fees and to increase the processing payment paid to councils, as is the case with the LSL. However, the more efficient means of collecting PRF fees, with least regulatory burden on councils, is for DPE to be paid this fee directly by applicants. This could be achieved as part of the ePlanning program by developing an online payment system for applicants on the Planning Portal.

Section 149 planning certificates

Section 149 planning certificates are legal documents issued by councils under the provisions of the EP&A Act. They contain information about how a property may be used and restrictions on development that may apply.

In accordance with section 149(2) of the EP&A Act, planning certificates must specify various matters prescribed in the EP&A Regulation relating to the land, including, for example:

- which environmental planning instruments (LEPs, SEPPs and Development Control Plans) are applicable
- identification of the zoning
- whether complying development can be carried out on the land
- whether the land is affected by coastal protection or mine subsidence matters, and
- whether the land is bush fire prone.

Councils may also “include advice on such other relevant matters affecting the land of which it may be aware” in accordance with section 149(5) of the EP&A Act. Councils can charge $53 for a certificate under section 149(2) and may charge an additional fee not more than $80 for any advice given under section 149(5).

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115 The matters to be specified in a section 149(2) certificate are prescribed in Schedule 4 of the Environmental Planning & Assessment Regulation 2000 (EP&A Regulation), see clause 279.

By way of contrast, Victoria offers a range of information online, provided centrally by the Department of Transport, Planning and Local Infrastructure. This is set out in Box 7.7 below.

**Box 7.7 Victoria’s online planning information:**

- **Planning schemes** – provides planning scheme maps and provisions for all of Victoria’s planning schemes in PDF format for free.
- **Planning maps** – allows searching planning scheme maps using a property address, viewing planning zones and overlays, and accessing information about heritage listed properties for free.
- **Property reports** – includes the Basic Property Report, Planning Property Report and Bushfire Prone Area Report for free; and Detailed Property Report for $4.40 plus service charge (this includes a site diagram and dimensions with approximate area and perimeter).
- **Planning property report mobile app** – provides access to planning property reports anywhere, anytime, for free.
- **Planning certificates** – makes planning certificates available from Landata in the Department of Transport, Planning and Local Infrastructure or from local councils. Landata can only provide certificates for the councils listed on their website (a majority of Victorian councils) and people must obtain certificates directly from councils not listed. Planning certificates are official statements of the planning controls that apply to a property and contain zoning information, overlays of planning controls, and details of reservations and classified roads that affect the land. Applications for a planning certificate can be made online for $17.13.


One of the NSW planning reforms outlined in the Planning White Paper was the development of an electronic planning certificate which would show the zoning and development standards that relate to a particular parcel of land. This electronic certificate could cover zoning and development standards information currently provided in accordance with section 149(2). The ePlanning program will enable all DAs to be lodged and tracked through the NSW Planning Portal. It would be sensible to progress the reform of issuing zoning and development standard certificates to property owners centrally as part of the ePlanning program. This would substantially reduce the current regulatory burden on councils to provide this information to property owners, and could enable the information to be provided more cheaply (as is the case in Victoria).

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117 Planning White Paper, April 2013, p 56.
As information provided under section 149(5) is local information held by councils, it may not be possible to provide this information centrally. However, the Planning Portal could still provide a link to this information or refer to council websites. Currently, because the information provided under section 149(5) is not prescribed in anyway, it varies considerably from council to council. There would be merit in specifying the information that may be provided by prescribing it in the EP&A Regulation. It should reduce the compliance burden on councils and improve the consistency and quality of information provided.

**Notification of changes affecting planning certificates**

Until such time as planning certificates can be provided centrally, DPE should work with councils to ensure there is timely notification of changes that affect section 149 planning certificates. This would assist councils to make necessary changes to the certificates in time to comply with new legislative requirements. If changes can be planned for ahead of time it would be possible for councils to meet these changes with existing resources and avoid additional costs.

**Duplicate DA/CC application forms**

Some councils have separate DA and CC forms, whilst others have combined DA and CC forms. Presently, councils are not prevented from combining these forms to remove duplicative information. However, with the implementation of the ePlanning program there is an opportunity to standardise and combine these forms, which would be more efficient than each council redesigning their own forms. A standardised, combined online form would have benefits for both councils and applicants.

### 7.3 One-stop shop

According to councils, the delays caused in relation to the following planning processes are creating unnecessary compliance burdens and costs:

- The Gateway process that councils must comply with in amending their LEP or reclassifying land from “community” to “operational”.
- The referral of DAs to State agencies for concurrence or advice, if the agency has relevant expertise to assist with the assessment of the development (eg, bushfire prone land).

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121 See for example, EP&A Act, s.79BA.
The Integrated Development Assessment (IDA) process that councils must comply with to approve developments that require one or more other specified approvals from State agencies.\textsuperscript{122}

Before an environmental planning instrument, such as a LEP, can be made or amended, the council must prepare a document that explains the effect of the proposed new or amending instrument and sets out the justification for the proposed instrument. This is called the ‘planning proposal’. After preparing the planning proposal, the council must forward it to the Minister for Planning for a Gateway determination. The Gateway process requires the Minister to determine the consultation councils must undertake with the community and potentially adversely affected state and federal agencies.\textsuperscript{123}

Integrated development is development (not being State significant development or complying development) that requires development consent and one or more specified approvals from State agencies (eg, environment protection licence, fisheries management permit, mining lease).\textsuperscript{124}

In the Planning White Paper, the NSW Government proposed establishing a one-stop shop for referrals, concurrence and other planning related approvals within DPE to coordinate, manage and facilitate State agencies’ input for speedier assessments.\textsuperscript{125} The Planning Bill 2013 and Planning Administration Bill 2013, which sought to implement the proposed reforms in the Planning White Paper, did not proceed through Parliament. The NSW Government is now seeking to implement many of the proposed reforms in the Planning White Paper through the existing planning framework.

Implementation of a one-stop shop for agency referrals, concurrence and approvals in relation planning proposals (ie, LEPs), DAs and IDAs should reduce the costly delays experienced by councils and applicants.

Draft Recommendations

19 That DPE manage referrals to State agencies through a ‘one-stop shop’ in relation to:

\textsuperscript{122} EP&A Act, Part 4, Div 5.
\textsuperscript{123} See EP&A Act, ss.55 and 56(1),(2) & (3).
\textsuperscript{124} EP&A Act, s.91.
\textsuperscript{125} Planning White Paper, April 2013, p 103.
- planning proposals (LEPs)
- development applications (DAs), and
- integrated development assessments (IDAs).

### 7.3.1 Stakeholder concerns

Box 7.8 below sets out the range of concerns and proposed solutions councils raised in relation to amending LEPs and the Gateway process.

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**Box 7.8 Gateway process for LEP amendments**

**Council concerns and comments:**

- The process is too complex, lengthy and excessive for minor amendments to LEPs.
- There are significant delays caused by DPE and by State agencies’ input.
- Virtually any change to a planning proposal requires re-exhibition and further public consultation.
- The Standard Instrument LEP is too rigid and causes the need for spot rezonings.
- There is poor coordination between the relevant State agencies on planning proposals.
- The timeframe for processing minor LEP amendments has improved in recent times through increased delegations and streamlined processes within DPE.
- The Gateway process is more consistent, less corrupt and quicker than the system before the Gateway process was introduced.

**Solutions proposed by councils:**

- The process needs to be reviewed and streamlined.
- DPE needs to be better resourced to reduce delays.
- Minor amendments should not require a Gateway determination and should be delegated to councils to determine.
- Non-controversial LEP amendments should have a fast track process.
- The Act should provide for circumstances where changes to planning proposals can be made without triggering the need for further community consultation.
- Don’t allow other agencies’ input to derail the process (ie, can result in modifications to the planning proposal and council having to consult with the community again) - get early advice from other agencies that they are bound by, before going through the Gateway process.
- If the LEP amendment is in line with the Regional Growth Plan, the role of State agencies in the LEP amendment should be minimised and expedited.

**Source:** Various submissions and questionnaires to IPART, and comments from Coffs Harbour, Wagga Wagga and Sydney workshops.
Similar issues were raised by councils concerning delays created by State agencies in the development approval process. These issues are set out in Box 7.9 below.

**Box 7.9  DA and IDA related referrals, concurrence or approvals from State agencies**

**Council concerns:**
- The 40 day timeframe for processing IDAs is unachievable due to State agency input being late or right at the end.
- State agencies won’t accept and respond to IDA referrals electronically.
- There are excessive delays with IDAs.
- The Rural Fire Service (RFS) is very slow to respond to DA referrals and is the agency most responsible for extensive delays.
- Delays caused by State agencies in processing DAs reflect on councils when it is out of their control (for eg, councils must refer DAs to RFS because they don’t have the in-house expertise).

**Solutions proposed by councils:**
- There should be defined timeframes for State agencies’ input or agencies should publicly report on their IDA processing times.
- There should be timeframes on RFS for DA referrals.
- There needs to be deadlines set for State agency concurrences or approvals and, if a response is not received by the deadline, the consent authority should be able to proceed to determine the application.
- Agencies should accept electronic referrals.

**Source:** Various submissions and questionnaires to IPART, and comments from Coffs Harbour workshop.

**7.3.2  Background**

**Minor amendments to LEPs**

It would appear from council comments that the delays experienced in making minor amendments to LEPs are due to three key causes:
- DPE’s processes.
- Minor changes to planning proposals as a result of the consultation process resulting in the proposal having to be re-exhibited and further consultation undertaken.
State agency input.

**DPE’s processes**

According to DPE, it has recently implemented a number of measures to improve processing times for ‘minor’ planning proposals that are required to go through the Gateway by increasing delegations and streamlining processes. A large number of minor LEP amendments have now been delegated to DPE Regional Offices or to the councils to determine, instead of DPE’s head office under delegation of the Minister. DPE’s head office only considers significant planning proposals.\(^{126}\)

In the 2014-15 financial year, approximately 85% of Gateway determination notices in relation to planning proposals (i.e., 348, out of a total of 411) were issued by DPE’s Regional Offices, streamlining the decision-making process and reducing the time taken to issue a determination. Further, in the 2014-15 financial year, 75% of finalised LEP amendments (i.e., 205, out of a total of 272) were finalised by the local council under delegation of the Minister, as they were considered to be minor in nature or of local significance.\(^{127}\)

**Minor amendments to LEPs and minor changes to planning proposals**

Section 73A of the EP&A Act provides an ‘expedited’ process for minor amendments to LEPs, such as those made:

- to correct errors
- in relation to consequential, transitional or machinery matters, or
- that will not have any significant adverse impact on the environment or adjoining land.

It is not necessary to comply with the pre-requirements to making an LEP amendment, such as community consultation, in such circumstances.

There is also a mechanism in the EP&A Act to enable flexibility when dealing with minor changes to planning proposals as a result of the consultation process, without having to re-exhibit and undertake further consultation. Section 58 of the EP&A Act allows councils to vary a planning proposal as a consequence of considering any submission or report during the community consultation or for any other reason. However, the council must forward the revised planning proposal to the Minister. Further community consultation is not required unless the Minister directs.

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\(^{126}\) Information provided to IPART from DPE, 2 November 2015.

\(^{127}\) Email to IPART from DPE, 10 December 2015.
Significant changes between the LEP as ‘exhibited’ in public consultation and ‘as made’ can invalidate the LEP. As a result, DPE requires revised planning proposals to be re-exhibited and consulted on if the change is significant.

**State agency input**

Under the Planning White Paper the NSW Government proposed establishing a one-stop shop for referrals, concurrence and other approvals within DPE to coordinate and manage the various state agencies’ input and reduce delays. We consider a one-stop shop approach could assist to reduce costly delays to councils and proponents as a result of State agency input to planning proposals.

**Reclassification of land through the LEP amendment process**

A further concern raised by councils was whether the LEP amendment process was an appropriate process for the reclassification of land under the LG Act. We have discussed this issue in Appendix B, Table B.4, item 4.

**DA and IDA related referrals, concurrences or approvals from State agencies**

DPE publicly reported on agency concurrence and referral times in June 2010. This report shows that in the 2009 annual reporting period RFS had the greatest number of concurrences and referrals, representing approximately half of all concurrences and referrals received by State agencies - 4,443 out of a total of 9,887 received by all State agencies. RFS took on average approximately 17 days to process concurrences and referrals, which was quicker than the majority of other State agencies. In future, with the advent of ePlanning and the online lodgement and tracking of development applications, referral times will be more transparent.

We consider a one-stop shop approach would also reduce costly delays in relation to DA and IDA concurrence and referrals from State agencies.

**7.4 Development approval process**

A number of councils and broader stakeholder groups raised the complexity of the NSW development approval system as a regulatory burden on councils. Of particular concern was the excessive number of consultant reports and further requirements imposed through consent conditions.

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129 Planning White Paper, April 2013, p 103.
131 Ibid, Table 4.1, p 9.
DPE’s current initiatives to clarify and expand the categories of complying developments (discussed in Appendix B, Table B.4, item 1) and implement the ePlanning program (discussed previously in section 7.2) – will simplify the development approval process and conditions of development consents.

We recommend that DPE develop suites of standardised development consent conditions to reduce the regulatory burdens on councils by:

- reducing the need for individual councils to develop their own consent conditions - instead councils can use (or adapt where necessary) a standard suite of conditions
- drawing on the collective expertise of DPE and other relevant planning, building, environmental and legal experts across the State to develop optimal conditions
- increasing the clarity and consistency of conditions imposed - this would improve the ease with which conditions can be complied with or enforced, and
- reducing the volume of conditions imposed by rationalising the various similar conditions currently used and streamlining or eliminating conditions that are not necessary to achieve good planning, safety or environmental outcomes - eg, conditions requiring further information, subsequent approvals or consultant reports which are inessential.

It would also reduce the complexity and cost of development approvals for applicants.

Draft Recommendation

20 That DPE develop suites of standardised development consent conditions and streamline conditions that require consultant reports or subsequent approvals, in consultation with councils, State government agencies and other key stakeholders.

7.4.1 Stakeholder concerns

Stakeholders raised a number of concerns in relation to the development approval process that impose compliance burdens on councils, and development applicants, largely by creating delays and increasing costs. These concerns, and proposed solutions to address them, are summarised in Box 7.10 below.
Box 7.10 Development approval process

Stakeholder concerns:

- The development approval process is overly complex and lengthy (NSW has the longest processing times of any other State).
- Development consents are granted with too many conditions and too many requirements for further approvals, to submit consultants' reports, provide information or satisfy other requirements.

Solutions proposed by stakeholders:

- The NSW Government should have regard to the Queensland development approval process, which is more streamlined and practical.
- Reduce the necessity for further approvals, reports or information unless necessary, justified and appropriate for the size, scale and nature of the development.
- Streamline the number of consultants' reports required before a DA is approved.
- Develop template consents / consent conditions for the State and have all councils use standard consents and conditions.

Sources: Various submissions and questionnaires to IPART and comments from Sydney workshop.

According to the Urban Taskforce, “the development of a simpler, streamlined planning system, with standardised documentation, would significantly reduce the amount of reporting councils are required to undertake”.132

7.4.2 Background

Current DPE initiatives, such as expanding the category of complying developments and moving to online lodgement and tracking of DAs through the ePlanning program, will assist to simplify the development approval process. We note too that part of the development of the Electronic Housing Code, now used by a majority of councils, was standardisation of “development standards” (similar to consent conditions) which must be adhered to when undertaking complying developments.133

The Planning White Paper proposed the development of a standard state-wide toolbox of development conditions. It noted that “consistent development consent conditions across the State will enable better compliance with conditions, faster determination of development proposals and greater certainty in the matters that need to be satisfied”.134

132 Urban Taskforce Australia submission to IPART Issues Paper, 14 August 2015, p 1.
134 Planning White Paper, April 2013, pp 120 and 187.
In our *Local Government Compliance and Enforcement – Draft Report* we recommended DPE develop (where appropriate) standardised and consolidated suites of development consent conditions for councils to use for different forms of development. That Draft Report also commented that there may be value in the development of a suite of “do’s” and “don’ts”, ie, what may or may not be included as consent conditions, particularly with respect to reasonable post approval third party sign-offs or requirements. Examples include requirements for various consultants reports, certificates, acoustic reports, flooding reports, land contamination reports, surveys, etc.135

The Lambert Building Review Draft Report also recommended the development of standardised requirements and conditions, in particular:

- a standard set of information requirements to support DAs
- a standard set of construction management conditions
- a standard set of DA headings and conditions but with flexibility to add or vary those conditions where a case can be established for doing so which is subject to peer review, and
- guidelines on how to reduce the need for detailed building information requirements at the DA stage.136

We maintain that there would be considerable value in the NSW Government progressing this recommended reform to develop standardised development consent conditions. It would alleviate unnecessary regulatory burdens on councils and development applicants.

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8 Administration and governance

The State Government imposes requirements controlling local government’s administrative processes and governance arrangements to ensure sound financial management and democratic processes. It does this through requirements relating to financial accountability, strategic planning, community consultation, legislative compliance, Ministerial oversight and administrative interactions with State Government.

The draft recommendations made in this chapter take a whole of government approach to addressing issues raised by stakeholders and reducing regulatory burdens by:

- removing duplication in reporting, such as in councils’ General Purpose Financial Statements, GIPA and Public Interest Disclosure reporting
- streamlining and simplifying processes, such as in obtaining Ministerial approvals, and
- removing excessive regulatory and other requirements in areas such as tendering and procurement.

Some draft recommendations reduce burdens by using a risk-based approach to devolving authority and responsibility to councils. Examples are:

- increasing the threshold for using tendering processes for lower-risk councils, and
- allowing councils to delegate the acceptance of tenders to General Managers.

We note the Office of Local Government is currently undertaking reforms that may reduce the burdens on councils in the areas of:

- performance measurement and reporting
- asset management and reporting, and
- code of conduct.
Other issues identified by councils are likely to be addressed when the NSW Government revises the *Local Government Act 1993* following the reports from the Independent Local Government Review Panel and the Local Government Acts Taskforce.\(^{137,138}\)

Other burdens raised by councils on which we are not proposing to make recommendations are discussed in Appendix B, Table B.2. Some matters raised were deemed out of scope. These are listed in Appendix C.

### 8.1 Integrated Planning and Reporting framework

As of 1 July 2012, all councils in NSW were working within the Integrated Planning and Reporting (IP&R) framework set out in the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*.

Under IP&R, councils must engage with their community to prepare strategic planning documents, identifying the community’s long-term objectives and how they will be progressed over the course of the four-year council term. Councils must regularly report to their community on progress in meeting those objectives.\(^{139}\) Documents must be prepared in accordance with the statutory requirements.\(^{140}\)

The IP&R framework has been favourably received by councils that recognise its role in improving strategic planning, budgeting and community consultation. Many councils see it as an example of best practice regulation. Others identified aspects that were resource intensive, duplicative and not always effective in getting community input. Councils consider some aspects to be overly prescriptive, but are seeking more guidance for others.

IP&R has not been in place for an entire electoral cycle, and our current review does not review the entire IP&R framework. The Government’s planned revision of the *Local Government Act 1993* presents an opportunity to reassess how well the IP&R framework is meeting its objectives, and incorporate amendments to address unnecessary compliance and reporting burdens.

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\(^{139}\) *Local Government Act 1993*, sections 402-406, 428(2) and 428A, and *Local Government (General) Regulation 2005*, clause 217.

In the interim, we consider that the Government could work with councils to improve their strategic planning capacity in three areas. We propose more guidance be provided about measuring performance, and the purpose, form and content of some documents. Our recommendations should reduce the burden of complying with IP&R and increase its value to the community. We have made draft recommendations about:

- **performance measures** to assess progress in achieving community objectives
- the **End of Term Report** that assesses how the Community Strategic Plan has been implemented over the past four years, and
- the **State of the Environment Report**, that assesses progress against environmental objectives in the Community Strategic Plan.

**Draft Recommendations**

21 That the NSW Government streamline the reporting requirements for the Integrated Planning and Reporting (IP&R) framework in the revised Local Government Act.

22 Ahead of the next IP&R cycle (2016), that the Office of Local Government:
   - provide councils with a common set of performance indicators to measure performance within the IP&R framework
   - conduct state-wide community satisfaction surveys and release the results to allow comparisons between councils and benchmarking
   - provide guidance to councils on the form and content of the End of Term Report and its relationship to local councils’ Annual Reports
   - clarify for councils the purpose, form and content of the State of the Environment report and clarify its relationship to the End of Term Report
   - work with the Office of Environment and Heritage, the NSW Environment Protection Authority and other relevant agencies to develop performance indicators for councils to use, and
   - where relevant, amend the IP&R Guidelines and Manual to incorporate this material.

Financial reporting requirements in the IP&R framework are considered in section 8.2. Half-yearly reporting against the Delivery Program is discussed in Table B.2 in Appendix B.

### 8.1.1 Stakeholder comments

Box 8.1 contains a summary of the key comments about the major burdens imposed by the IP&R framework made by councils in questionnaire responses, submissions to the Issues Paper, and in the workshops.
We note that many of the councils commenting on IP&R during our consultation consider the IP&R framework to be best practice, and to have brought major benefits to NSW councils.

**Box 8.1 Council comments about the reporting and compliance burdens associated with the IP&R framework**

**IP&R generally:**
- requirements are overly prescriptive
- reporting documents are unnecessarily duplicative or repetitive
- compliance is resource-intensive and, for some councils, the cost exceeds the benefit
- complying with all the requirements can be onerous for small councils
- the resulting long and complex documents are not conducive to community engagement, which is an essential feature of IP&R, and
- OLG guidance does not clearly specify how councils can satisfy the requirements.

**Performance reporting:**
- the guidelines do not provide enough guidance on measuring council performance.

**End of Term Report:**
- repeats information already released in the previous three annual reports, and
- may be unnecessary as it is not read by many residents and ratepayers, or used by councillors.

Options proposed to redress the burdens were to eliminate it, provide more guidance as to form and content, or use an online portal for reporting the relevant data.

**State of the Environment Report:**
- its use was not clear and it may be unnecessary
- it duplicated quadruple bottom line reporting against environmental objectives in the Community Strategic Plan in the End of Term Report
- councils use inconsistent performance indicators so results are not comparable, and
- reported data sets often do not align with LGA boundaries.

Proposed solutions included transferring responsibility for the State of the Environment Report to Joint Organisations, removing duplication with the annual report and End of Term Report, and developing a set of common performance indicators with a facility to upload data though a centralised portal, and completing the Local Government Performance Measurement Framework.

**Source:** Various submissions to IPART and Sydney workshop.
8.1.2 Background

Reporting is a key element of the IP&R framework. Both the End of Term Report and the State of the Environment Report are aligned to the electoral cycle. Both are opportunities for each council to reflect on the progress it has made during its term to implement the objectives established in the Community Strategic Plan, and report to the community.

End of Term Report

The End of Term Report is a report on a council’s progress in implementing the Community Strategic Plan during its term. The IP&R Manual explains what it must cover, and the processes required. Councils are encouraged to use the performance measures and assessment methods identified in their Community Strategic Plan to determine the report’s content. Reports should focus on initiatives over which councils have direct influence, although councils can choose to liaise with external organisations to obtain information to support the End of Term report.

While there is no prescribed format for End of Term Reports, they should outline how councils are progressing towards achieving the social, environmental, economic and civic leadership objectives of the Community Strategic Plan. Where the objectives are not being met, the report should address the impediments and how these might be overcome in the future.

The End of Term Report must be presented at the final meeting of an outgoing council (IP&R Guidelines, Essential Element 1.10). The End of Term Report is the outgoing council’s report to its community. It is also one of three components informing the incoming council’s review of the Community Strategic Plan (see IP&R Guidelines, Essential Element 1.11), which should occur within nine months of its election.

State of the Environment Report

Section 428A of the Local Government Act 1993 sets out what must be included in a State of the Environment Report (indicators for each environmental objective, a report on, and update trends in, each indicator, and identify all major environmental impacts). Councils may prepare a stand-alone report on the state of the environment which is appended to the annual report, and may also consider preparing a report in conjunction with other councils in the region or catchment with similar environmental objectives.

141 Local Government Act 1993 ss 428(2) and 428A.
The need to report on the environment was in place before the introduction of IP&R, and it was maintained under IP&R. The State of the Environment Report now occurs after four years, not three, it is more narrowly focused, and councils have more flexibility than previously in how it is prepared and presented.143

Performance reporting

Measuring performance is an integral part of IP&R. Performance measures are valuable for councils, communities and the State Government. Councils must include appropriate measures to assess their progress in meeting community objectives in all plans.

The IP&R Manual indicates that performance measures should be outcomes-based for the Community Strategic Plan, outputs-based for other plans and that councils should identify the baseline and target. Councils must develop performance measures for all the objectives and strategies in the Community Strategic Plan Delivery Program.144 When IP&R was implemented, many councils had limited experience in establishing relevant measures, although the IP&R Manual provided many examples.

In response to councils’ requests for more guidance in this area, OLG released Strengthening Councils and Communities: Building a new framework for measuring performance in Local Government, Discussion Paper in November 2013, proposing a new framework with a consistent set of measures. The paper acknowledges that OLG conducting state-wide community surveys could be a cost-effective strategy with benefits both to individual councils and the State.145 OLG is working with NSW councils on projects to develop a suite of measures to cover financial performance, asset management, governance and service delivery.

Providing NSW councils with a common set of relevant and meaningful performance indicators, and implementing a program of community surveys would have two benefits:

- It would assist councils to assess their effectiveness in delivering services and providing infrastructure and report their performance in a way their communities can understand, make valid comparisons with other councils, and drive continuous improvement.
- The NSW Government would have a reliable measure of the performance and sustainability of individual councils and the sector as a whole.

The discussion paper also suggests that a cost-effective way to assess community satisfaction is for OLG to conduct state-wide community surveys. Such surveys would ask about a community’s satisfaction with council performance, strategic direction and service delivery.

**Local Government Acts Taskforce report**

The Taskforce recommended:

- elevating IP&R to form the central framework of the new Local Government Act and the primary strategic tool that enables councils to fulfil their civic leadership role and deliver infrastructure, services and regulation
- embedding the principles of IP&R in the Act more broadly, setting minimum standards in the Act and defining the process through regulation, codes and/or guidelines
- removing duplication from other parts of the Act, where the principle or practice is already captured in the IP&R legislation or guidelines, and
- simplifying the provisions of IP&R to increase flexibility for councils to deliver IP&R in a locally appropriate manner.146

The NSW Government’s response to the Taskforce’s report stated an intention to phase in a new Local Government Act from 2016-17. The response gave broad support to the Taskforce’s recommendations, and indicated that the design of the new Act will make the IP&R framework more prominent, reduce unnecessary red tape and prescription, and have a differential approach to councils that have become ‘fit for the future’, including by reducing the reporting and compliance burden.147

**Independent Local Government Review Panel Report**

The Independent Local Government Review Panel (ILGRP) considered that soundly based long-term asset and financial plans are the essential foundations of sustainability, and concluded that more rigorous Delivery Programs are necessary. It proposed expanding the mandatory guidelines for Delivery Programs to give councils more specific guidance for achieving their objectives.148

In response, the Government committed to amend the guidelines to embed the principle of fiscal responsibility and improve financial and asset planning ahead of the next IP&R cycle (2016) with the changes reflected in the revised Act.149

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8.2 Financial reporting

Councils are required to report extensively on their financial performance. *The Local Government Code of Accounting Practice and Financial Reporting* (the Code), published annually by OLG, prescribes the form of council financial statements. The statements include the general purpose financial statements, special purpose financial statements and special schedules.

Stakeholders indicated that some parts of the code have requirements that are duplicative, unnecessary or overly complex.

Our draft recommendation addresses reporting burdens contained within the Code, for example where:

- the same information is being reported in two places in the financial reports, such as water and sewer special purpose financial statements and the general purpose financial statements
- reporting is unnecessarily onerous, such as certain projections required in the financial statements, and
- reporting requirements are more complex and detailed than is required by the agency, such as in special schedules 3 to 6 which relate to water and sewer operations.

To address these issues we recommend removing reporting requirements in the Code that exceed the Australian accounting standards (as issued by the Australian Accounting Standards Board). Our draft recommendation allows that, where reasonable, some requirements can be retained because of their unique relevance and high value to local government. Examples of these include:

- Note 21, Results by Fund, which provides a full set of financial reports for separate operational funds such as general, water and sewer funds, and
- Special Schedule 7, Report on Infrastructure Assets, which gives detailed reporting of councils’ infrastructure assets, a critical and major part of Local Government activity.

Examples of how to reduce duplication and streamline councils’ financial reports are given in Box 8.3 below.

Draft Recommendations

23 That the Office of Local Government remove requirements for councils to report more in the General Purpose Financial Statements than is required by the Australian accounting standards, issued by the Australian Accounting Standards Board, except for requirements which are unique and high value to local government such as Note 21 and Special Schedule 7.
8.2.1 Stakeholder comments

Stakeholders identified the following burdens relating to requirements in the Code:

Box 8.2 Council comments about the reporting and compliance burdens associated with financial reporting

- Duplication of information with the Financial Data Return, Grants Commission General Data Return, ABS Data collection, Special Schedule No. 1 and Note 2(a) of the General Purpose Financial Reports (GPFRs).
- Special Schedules relating to water and sewer are too complex.
- Special Purpose Financial Reports relating to water and sewer are duplicative with Note 21 which also reports financial statements for water and sewer.
- Projections of revenue and expenses in Note 17 are onerous, unnecessary and duplicate section 94 plans (where they exist).
- Overheads are not consistently applied for Note 2a so data is not comparable.

Solutions suggested by councils to address these concerns included:

- Remove overlap with Grants Commission General Data Return, and Special Schedule No. 1 and Note 2(a) of the GPFRs.
- Simplify or remove Special Schedules 3 to 6.
- Remove the Special Purpose Financial Statements relating to water and sewer from the Local Government accounting code.
- Remove requirement for projections of developer contributions from Note 17.
- Align Note 2(a) to CSP categories, and remove the “Governance” category which is duplicated in Special Schedule 1.
- Provide a standard report of Financial Data Return (FDR) data back to councils that they can use to meet Annual Report obligations.
- The FDR can be streamlined by removing the 'ABS functional detail worksheet'.

Source: Various submissions and Coffs Harbour and Sydney workshops.

8.2.2 Background

In response to council concerns, we note that the FDR is currently reported in a standard format, and software packages that automate the reporting process are available and widely in use by councils. The portion of the FDR that is not generated from councils’ existing financial data relates to ABS requirements which, since the ABS is a Federal agency, are outside the scope of this review.
Box 8.3 Examples of how to reduce duplication and streamline councils’ financial reports

- Simplify General Purpose Financial Reports by:
  - removing Special Purpose Financial Statements relating to water and sewer (where they duplicate information reported in Note 21)
  - removing Special Schedules 3 to 6
  - moving water and sewer dividend information to Note 21
  - moving National Competition Policy and water and sewer best practice management information to Note 1
  - removing projection of ‘future contributions’, ‘works still outstanding’ and ‘over/under funding’ from Note 17
  - removing requirement to show ‘Governance’ as a separate item in Note 2(a)
  - simplifying Note 2(a) to be consistent with activity categories in IP&R or the Delivery Program, and
  - simplifying Special Schedule 1 to only contain information required by the Local Government Grants Commission in allocating general purpose grants under the Local Government (Financial Assistance) Act 1995 (Cth).

In Box 8.3 we provide an example of streamlining requirements for Note 2(a) and Special Schedule 1. In this example, the item “Governance” would be removed from Note 2(a) as:

- it is duplicated in Special Schedule 1, which is required by the ABS and the Grants Commission whereas Note 2(a) is not,\(^\text{150}\) and

- it would streamline the reporting of items in Note 2(a), as line items would be available in IP&R documents\(^\text{151}\) and would not have to be recalculated to generate the Governance line item.

DPI Water has indicated support for streamlining reporting in sewer and water fund reporting, similar to the example in Box 8.3. OLG and DPE indicate that projections contained in Note 17 are not required and support removing these requirements to streamline this part of the financial statements.\(^\text{152}\)


\(^{151}\) In IP&R or Delivery Program format consistent with the code. Local Government Code of Accounting Practice and Financial Reporting, Update 23, June 2015, p A-44.

\(^{152}\) The projections in Note 17 were introduced to improve reporting around section 94 plans. However detailed reporting is now available in councils IP&R documents. Phone call with DPE, 27 October 2015 and phone call with OLG, 4 November 2014.
8.3 Tendering and Procurement

Our consultation with stakeholders and comparison with State Government tendering thresholds suggests the current $150,000 for local government tendering threshold is too low.

We have reviewed the regulations and guidance regarding local government procurement and found current practices provide adequate levels of probity and flexibility. We note that the risks attached to tendering processes will differ between councils. Relevant factors include councils’ size, maturity of internal controls and capacity to manage probity risks. We recommend OLG develop criteria to determine the circumstances in which the higher threshold should apply. For councils with good practices and compliance, our draft recommendations would make local government tendering thresholds consistent with those of the State Government.

The requirement that all tenders be considered by the elected council represents an unnecessary administrative burden. Our draft recommendations reduce this burden by allowing councils to delegate this function to senior council staff. This is consistent with the NSW Government’s response to the ILGRP and LG Acts Taskforce recommendations for Fit for the Future councils.153

Some councils raised the issue of a lack of competition for specific services being tendered in some rural and remote areas. We conclude that the Guidelines for managing risk in direct negotiations published by the Independent Commission Against Corruption (ICAC)154 adequately explain the approach to tendering where open tendering is difficult.

Draft Recommendations

24 That clause 163(2) of the Local Government (General) Regulation 2005 be amended to allow the Office of Local Government to determine the councils for which the threshold for formal tendering would be increased to $250,000, with this threshold to be reviewed every five years.

25 That section 377(1)(i) of the Local Government Act 1993 be amended to allow the Council to delegate the acceptance of tenders.

Draft Finding

1 That the principles and processes outlined in ICAC’s Guidelines for managing risk in direct negotiations are best practice standards which can be applied where a lack of competition exists in a Local Government Area.

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8.3.1 Stakeholder comments

Stakeholders identified a number of issues relating to tendering and procurement processes. Burdens and solutions are summarised in Box 8.4.

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**Box 8.4 Stakeholder comments on local government tendering requirements**

Stakeholder identified burdens:
- Tenders for amounts above $150,000 require a complicated public tender process. The limit of $150,000 is too low.
- Council officers cannot directly negotiate with tenderers until after councillors have rejected an offer. This adds time and cost to the procurement process.
- Councils must list every contract with a value above $150,000 on their website which duplicates information in the Annual Report.
- The use of a physical tender box is an unnecessary burden.
- In some rural and remote communities there is limited competition and the tendering process is an unnecessary burden.

Examples of solutions proposed by stakeholders:
- Increase the contract value limit before formal tendering is required to $250,000 or $500,000, and increase it by CPI or LGCI each year.
- Allow council officers to negotiate without requiring the tender to be formally rejected.
- Allow councils to use a ‘best and final offer’ option when negotiating the best offer directly.
- Alternatively, councils should be able to negotiate with shortlisted parties within the tender process (as long as this is clearly defined in the tender documents).
- Allow councils to accept tenders by electronic means only.
- Remove advertising and submissions rules for contracts.
- Add local providers to State tendering prequalification panels.
- Allow the appointment of contracts to be delegated to General Managers in certain circumstances (so contracts don’t always need to go to Council meetings).
- More guidance needed for councils on assessing value for money of tenders.

*Source:* Various submissions and comments from councils at the Coffs Harbour, Wagga Wagga, Dubbo and Sydney workshops.
8.3.2 Background

Section 55 of the LG Act requires councils to invite tenders, with some exceptions, before entering into a contract to carry out work, provide a service, provide goods or materials, dispose of council property or make regular payments over two or more years.\(^\text{155}\) The *Local Government (General) Regulation 2005* (the Regulations), and tendering guidelines published by the OLG, outline councils’ obligations in regard to tendering for contracts when procuring goods and services.

The Regulations require tendering procedures be followed for contracts over $150,000, although OLG’s tendering guidelines state councils may choose to use tendering processes for contracts below this limit.\(^\text{156}\)

The Independent Commission Against Corruption (ICAC) provides guidelines for dealing with situations where government bodies may engage in direct negotiations. The guidelines advise that generally direct negotiations should be avoided where possible. The guidelines recognise that a monopoly may exist in rural and remote areas, but recommends that this should be tested with a substantial fact finding process before abandoning a tendering process.\(^\text{157}\)

The issue of lack of competition between tenderers in regional areas was raised during consultations with stakeholders. We note that where a lack of competition is established, ICAC guidelines include suggestions for avoiding, reducing and controlling the conflict of interest risks inherent in procuring without a competitive process.\(^\text{158}\)

8.4 Ministerial approvals

Ministerial approvals are required before councils can take certain actions. The main reasons for requiring Ministerial approvals are:

- ensuring probity and preventing corruption, and
- protecting the interests of the State.

Unnecessary or excessive requirements for Ministerial approvals contained in the LG Act, as well as time delays in obtaining approvals, may represent a regulatory burden for councils.

\(^{155}\) *Local Government Act 1993*, section 55.
The removal of requirements for Ministerial approvals, where unnecessary, would reduce the regulatory burden on councils. The level of oversight provided by Ministerial approvals should be proportionate with each council’s capacity. As noted above, approvals are often required to ensure probity, prevent corruption, and protect the interests of the State. Approvals that exist for these purposes should not be removed.

We also note that councils expressed concern with the length of time taken to gain some approvals. We recommend that timeframes be introduced into OLG processes and guidelines to improve response times, for example, for:

- low risk or less complex activities such as termination payments to senior staff\(^{159}\) – 30 days
- medium risk or medium complexity activities such as reducing the number of councillors\(^{160}\) or forming a corporation\(^{161}\) – 60 days, and
- high risk or complex activities such as entering into a public private partnership\(^{162}\) or compulsorily acquiring land\(^{163}\) – 180 days.

**Draft Recommendations**

26 That the Department of Planning and Environment, through the Office of Local Government, review the requirements in the *Local Government Act 1993* for Ministerial approvals; those that are not justified on the basis of corruption prevention, probity or protecting the interests of the State be removed.

27 That the Office of Local Government introduce guidelines that specify maximum response times for different categories of approvals.

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\(^{159}\) Ministerial approval is required for certain termination payments to senior staff: LG Act, s 354A

\(^{160}\) Ministerial approval is required for a council to reduce the number of councillors: LG Act, s 224A.

\(^{161}\) Ministerial consent is required for a council to form or participate in the formation of a corporation or other entity: LG Act, s 358.

\(^{162}\) A council must provide the Departmental Chief Executive with an assessment of the public private partnership project. The Departmental Chief Executive can then refer it to the Project Review Committee for review or, if the project is not significant or high risk, the council can enter the PPP with the Minister’s consent: LG Act, s 400F.

\(^{163}\) Ministerial approval is required for a council to give a compulsory acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991*: LG Act, s 187.
8.4.1 Stakeholder comments

Box 8.5 sets out issues relating to Ministerial approvals identified by councils, and some proposed solutions.

Box 8.5 Stakeholder issues and proposed solutions relating to Ministerial approvals

Issues identified by stakeholders

- The process for obtaining Ministerial approval is cumbersome, lacks response commitment by ministers and represents another step in a process.
- In particular, the requirement for Ministerial approval for forming and participating in corporations causes:
  - delay and uncertainty for councils, and
  - a disincentive for councils to use corporate structures, and may mean missed opportunities to create more efficient structures for shared services and regional delivery.

Examples of proposed solutions

- Remove requirements for Ministerial approval where not necessary nor adding value.
- Remove the requirement for Ministerial approval to form or participate in a corporation.

Source: Various submissions to IPART and Coffs Harbour and Wagga Wagga workshops.

OLG provided comment on stakeholder issues and proposed solutions and is supportive of a review of Ministerial approvals on a case by case basis. OLG also indicated that approval for forming corporations should be considered for removal if the integrity of the process could be retained.164

8.4.2 Background

Examples of actions for which councils require Ministerial approvals under the Local Government Act 1993 are set out in Box 8.6.

164 OLG, email dated 30 October 2015.
Box 8.6 Examples of council actions requiring Ministerial approval under the *Local Government Act 1993*

- section 47 – Leases, licences and other estates in respect of community land, with terms greater than five years – Ministerial approval required if any objection made, or lease or licence exceeds 21 years
- section 47A – Leases, licences and other estates in respect of community land, with terms of five years or less – Minister can decide if Ministerial approval is required
- section 60 – Approval from the Minister for Primary Industries required for various actions relating to council-owned water and sewage infrastructure
- section 111 – Minister’s written consent required for a council to revoke or modify a section 68 approval given to the Crown or a person prescribed for the purposes of section 72
- section 126 – Minister’s prior written consent required for a council to give an order under sections 124 or 125 in relation to vacant Crown land, a reserve or a common
- section 187 – Ministerial approval required for council to give a compulsory acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991*
- section 210B – Minister must approve a council’s resolution to abolish all wards in the council’s area
- section 224A - Ministerial approval required for a council to reduce the number of councillors
- section 354A – Ministerial approval required for certain termination payments to senior staff
- section 354E – Constitution/amalgamation/alteration of council areas – Ministerial approval required for certain increases or decreases in staff entitlements during proposal period to be binding on transferee council
- section 410 – Alternative use of money raised by special rates or charges – Ministerial approval required for internal loan of money, that is not yet required for the purpose for which it was received, for use for a different purpose
- section 424 – Ministerial approval required for council to remove its financial auditor
- section 622 – Ministerial approval required for means of borrowing other than by overdraft or loan
- section 625 – Councils may only invest money in a form of investment notified by order of the Minister
- section 633 – Approval from Minister responsible for the *Ports and Maritime Administration Act 1995* required for councils to erect a notice to prohibit or regulate the use of waters by a vessel.
8.5 Section 68 Local Government Act approvals

Section 68 of the LG Act specifies that certain activities can only be carried out if councils give approval (unless exempted by the Act or Regulation or a Local Approvals Policy (LAP)). The Local Government (General) Regulation 2000 contains detailed provisions relating to conditions for approvals for some activities, as does the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

Councils drew attention to the burden of complying with the need to give section 68 approvals, specifically in relation to caravan parks, mobile food vendors and amusement devices. Concerns were expressed about the resources (time, cost and expertise) required to process approvals and ensure compliance, the complexity of provisions, and duplication with other regulatory authorities.

We do not consider detailed requirements relating to approvals for a diverse range of activities should be in the LG Act and its regulations. Reviewing section 68 should result in a regulatory approach that would reduce the burden on the local government sector by streamlining and simplifying processes and removing duplication and inconsistencies.

The Local Government Acts Taskforce recommended a review of all council approvals processes and their legislative framework. In our Local government compliance and enforcement – Draft Report we recommended various options for streamlining section 68 approvals, and reducing the burden on both councils and business by streamlining and reducing regulation wherever possible. Draft Recommendation 28 is consistent with our previous recommendations and the Taskforce’s approach.

Draft Recommendation

28 That the Department of Planning and Environment, through the Office of Local Government, review all approvals required under section 68 of the Local Government Act 1993 in order to:

- determine the activities for which a separate local council approval under section 68 is necessary
- revise the regulatory frameworks within NSW legislation to remove duplication
- place as many approval requirements as possible in specialist legislation, and
- where appropriate, enable mutual recognition of approvals issued by another council.

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165 Submissions from Shoalhaven, Lismore, Ku-ring-gai.
8.5.1 Stakeholder comments

The burdens imposed by section 68 are well understood, having been canvassed in the two previous reviews noted above, as well as in council input to this review through questionnaires, workshops and submissions. Box 8.7 sets out the burdens identified by councils, and some solutions.

Box 8.7 Council comments on section 68 approvals

Caravan parks
- The Local Government (Manufactured home estates, caravan parks, camping grounds and moveable dwellings) Regulation 2005 which sets out detailed provisions for approval, design, siting, operation and construction is out of date and does not reflect the current industry.
- The approval process should be streamlined by allowing accredited certifiers to undertake annual inspections, or move to more self-assessment and certification.
- Councils with large numbers of premises to inspect face resourcing burdens.

Amusement devices
- The council's approval adds no value to community safety over and above safeguards covered by applicants' insurances.
- Exposure to claims on the council's insurance for activities it cannot supervise could be significant.
- Councils do not have the resources or expertise to ensure the devices will comply with the conditions of its registration under the work, health and safety laws.

Mobile food vendors
- The need for each council to approve the operation of a mobile food vendor is an unnecessary burden.

Generally
- Duplication of section 68 approvals with those required under other regulatory frameworks.
- Conditions for approvals are too complex and prescriptive.
- Separate approvals are unnecessary for minor activities, which should be exempt.
- Need for approval is inconsistently applied to the same activity in different locations (eg, busking only on community land).

Source: Submission to IPART Issues Paper from Ku-ring-gai Council, questionnaire responses from various councils, August 2015.

Some comments by councils about section 68 approvals raised issues related to resourcing, cost recovery and enforcement. These are systemic issues which are considered in Chapter 5.
There is currently a review being conducted by DPE in conjunction with OLG into the existing regulation and planning policies that control the approval process for manufactured homes, moveable dwellings manufactured home estates, camping grounds and caravan parks. The review’s intention is to:

…simplify the approvals pathway, reduce red tape and respond to the changing nature of these industries.\(^{168}\)

The discussion paper notes that the policy option it put forward is consistent with the Local Government Acts Taskforce recommendation to place approvals in specialist legislation, where possible.

### 8.5.2 Background

**Local Government Act 1993 Section 68**

Section 68 of the LG Act requires a person carrying out an activity contained in the Table to the section to have the prior approval of the council, except where the Act, the regulations or a Local Approvals Policy (LAPs) allows the activity to be carried out without needing approval.

Table 8.1 sets out the activities that councils need to approve under section 68.

\(^{168}\) Department of Planning and Environment, *Improving the regulation of manufactured homes, caravan parks, manufactured home estates & camping grounds*, Discussion paper (November 2015).
Table 8.1  Activities which require council approval under section 68 of the Local Government Act 1993

<table>
<thead>
<tr>
<th>Part</th>
<th>Activities</th>
</tr>
</thead>
</table>
| Part A | Structures or places of public entertainment  
Installing a manufactured home, moveable dwelling or associated structure |
| Part B | Water supply, sewerage and stormwater drainage work  
Includes connection to council sewers or drains, installing or disconnecting a meter connected to a service pipe, connecting private drains or sewers to public drains or sewers |
| Part C | Management of waste  
Includes transporting or placing waste in a public place, disposing of waste into council sewers, installing and operating a waste treatment device, operating onsite sewage management systems and skip bins |
| Part D | Community land  
Includes engaging in trade or business, theatrical musical or other entertainment, temporary enclosures, playing musical instruments or singing for reward, using loudspeakers, public meetings or addresses, and selling articles from a vehicle in a public place |
| Part E | Public Roads  
Hoisting goods over a public road using a hoist or tackle, and placing articles on or overhanging a public road |
| Part F | Other Activities  
Operating a public car park, caravan park or camping ground, manufactured home estate, installing domestic oil and solid fuel heaters, installing or operating amusement devices |

Source: Local Government Act 1993, Section 68, Table.

Councils should usually only need to consider separate applications for activities on community land (such as trading, entertainment and public meetings). For all other activities, an application for a section 68 approval can be made in conjunction with a development application under the EP&A Act. When granting development approval, a council can also grant an approval required by section 68 and attach any relevant conditions to the development approval. IPART’s Local government compliance and enforcement review considered various options for reform to the range of section 68 approvals, and the Draft Report recommended section 68 be reviewed and amended. We considered that a combination of options would be needed, including:

- expanding exemptions from approval, eg, for low risk, low impact activities
- providing standard, minimum requirements or exemptions within the regulations
- longer duration and automatic renewal of approvals where appropriate

169 EP&A Act s 78A.
abolishing or improving use of LAPs
- mutual recognition of approvals, and
- adopting best practice approaches to high-risk activities.\textsuperscript{170}

**Local Approvals Policies (LAPs)**

LAPs can provide exemptions from the need to gain approval under section 68 and outline criteria for those activities where approval is required.\textsuperscript{171} LAPs are potentially a means to:

- reduce red tape and enhance flexibility in regulatory requirements by providing exemptions to section 68 approvals in certain instances, and
- provide guidance to regulated entities as to how councils will exercise their discretion in determining section 68 approval applications.

Research undertaken for our review into *Local Government Compliance and Enforcement* indicated that few councils have LAPs, and those in operation are not being used extensively to streamline approvals under section 68.\textsuperscript{172}

**8.6 Recruitment and employment – temporary employment**

Section 351(2) of the LG Act allows a person appointed to a temporary position only to continue in that position for:

- 24 months if the holder of the position is on parental leave, or
- 12 months in any other case.

Stakeholders indicated the requirements of this section create an onerous regulatory burden by being too prescriptive and reducing workforce flexibility.

We make draft recommendations that would increase the flexibility of temporary employment arrangements by removing restrictions on the length of tenure of temporary employment from the Act to the Regulations, or to the relevant award.\textsuperscript{173}

We have also recommended that the maximum term of temporary employment be extended to four years which is consistent with State Government rules.

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\textsuperscript{171} *Local Government Act 1993*, section 158.


\textsuperscript{173} For example, the *Local Government (State) Award 2014*. 
Draft Recommendations

29 That the Local Government Act 1993 be amended to transfer current requirements relating to the length of time for temporary appointments under section 351(2) to the Local Government (General) Regulation 2005 or the relevant awards.

30 Extend the maximum periods of temporary employment from 12 months to four years within any continuous period of five years, similar to Rule 10 of the Government Sector Employment Rules 2014.

8.6.1 Stakeholder comments

Stakeholders raised concern around requirements in Section 351(2) of the LG Act which relates to maximum terms of temporary employment. Examples given where more flexibility is required included filling a vacancy caused by extended workers’ compensation leave, long service leave or secondment to a different position. The solution proposed by councils was to make section 351(2) more flexible.\(^{174}\)

In its response to stakeholder comments OLG agreed with stakeholder concerns.\(^{175}\)

8.6.2 Background

Section 351(2) of the LG Act states:

(2) A person who is appointed to a position temporarily may not continue in that position:

(a) if the holder of the position is on parental leave - for a period of more than 24 months, or

(b) in any other case - for a period of more than 12 months.

This issue was also raised in submissions to the LG Acts Taskforce.\(^{176}\) The LG Acts Taskforce recommended that the maximum term of a temporary appointment be changed from one year to two years.\(^{177}\)

Rule 10 of the Government Sector Employment Rules 2014 allows a maximum period of four years or, in some cases, five years.

\(^{174}\) Wagga Wagga workshop, 15 September 2015; LGNSW, Issues Paper submission.
\(^{175}\) OLG, email dated 30 October 2015.
Box 8.8 What does Rule 10 say?

10. Maximum period of temporary employment

(1) The maximum total period for which a Public Service non-executive employee may be employed in temporary employment in the same Public Service agency is 4 years within any continuous period of 5 years.

(2) The maximum total period of 4 years may, with the approval of the Commissioner, be extended for an additional period of up to 12 months.

(3) The Commissioner may determine classes of exceptions to this rule. Any such determination is to be made publicly available on a website provided and maintained by the Commissioner.

(4) This rule does not apply to special office temporary employees.


8.7 Public Interest Disclosures Act reporting

Every six months, councils must provide a report to the NSW Ombudsman on the council’s compliance with its obligations under the Public Interest Disclosures Act 1994 (PID Act). The 6-month reporting periods end on 30 June and 31 December of each year, and reports are due 30 days later or by such later date as the Ombudsman may approve.\(^{178}\)

Councils must also provide an annual report on compliance under the PID Act. This report must be provided to the Ombudsman and the Minister for Local Government by October each year. The report is tabled in Parliament by the Minister for Local Government.\(^ {179}\)

The information in both the bi-annual and annual reports is the same.\(^ {180}\)

To remove duplicative reporting we recommend that councils should not be required to provide annual reports to both the Ombudsman and the Minister for Local Government.

Councils should still be required to submit six monthly reports to the Ombudsman to support centralised collation of public interest disclosure reporting data. The Ombudsman’s Office can then use the data to make comparisons between councils and to assist regulation of the PID Act.

\(^{178}\) Public Interest Disclosures Act 1994 (PID Act), section 6CA.

\(^{179}\) PID Act, section 31.

\(^{180}\) Public Interest Disclosures Regulation 2011, section 4.
Draft recommendations

31 That section 31 of the Public Interest Disclosures Act 1994 be amended to require councils to report on public interest disclosures in their annual reports and remove the requirement for an annual public interest disclosures report to be provided to the Minister for Local Government.

8.7.1 Stakeholder comments

Issues raised around public interest disclosure reporting by councils were:

- Reporting the same information every six months and then annually is duplicative and excessively frequent.
- Providing reports to both the Ombudsman and the Minister is duplicative.
- Providing the annual report in October does not align with Local Government annual reporting timetable.\(^\text{181}\)

Solutions proposed by councils included:

- Combine 6-monthly and yearly reports into a single annual report.
- Report to either the Ombudsman or the Minister only.
- Move the annual reporting date one month later to the end of November to align with the Local Government reporting timetable.\(^\text{182}\)

IPART received a response from the NSW Ombudsman’s Office (the Ombudsman) to the issues and solutions raised by stakeholders. The Ombudsman was supportive of reducing unnecessary burdens on local government imposed by the PID Act provided this did not reduce transparency, accountability or the level of awareness of councils’ disclosure management.

The Ombudsman uses the information provided by councils to build a picture of the extent to which public interest disclosures are made and to produce annual reports on the oversight of the PID Act, to inform the Ombudsman’s Office’s audit program and to target training and awareness activities.

\(^{181}\) Councils must provide an Annual Report by the end of November each year. See the Local Government Act 1993, section 428(1).

\(^{182}\) Coffs Harbour and Dubbo workshops, 10 and 16 September 2015; Fairfield City Council, Richmond Valley Council, and Randwick City Council, submissions to Issues Paper, August 2015; Coffs Harbour City Council, Mosman Municipal Council, Upper Lachlan Shire Council and Liverpool City Council, questionnaire responses, August 2015.
The Ombudsman made suggestions to reduce PID Act related burdens:

- Require the information from the reports to be included in a council’s annual report (posted on the council’s website) as an alternative to providing the report to the Minister for tabling in Parliament.
- Allow the annual report to be provided in November consistent with the LG Act.
- Remove the requirement to submit a copy of the annual report to the Ombudsman.\(^{183}\)

The Ombudsman has previously made these suggestions to the Public Interest Disclosures Steering Committee, which is an advisory body to the Premier on public interest disclosure matters.

8.7.2 Background

We note the Ombudsman’s Office provides guidance and assistance to councils in meeting reporting requirements under the PID Act. This includes:

- the PID online reporting tool on the Ombudsman’s website\(^ {184}\)
- a template document to assist councils with annual reporting,\(^ {185}\) and
- guidelines for what information to include in the bi-annual and annual reports.\(^ {186}\)

The Ombudsman commented that the PID online reporting tool’s data validation functions contribute to the quality of the data provided.\(^ {187}\)

8.8 Government Information (Public Access) Act 2009 (GIPA Act) reporting and compliance

Councils must provide an annual report on compliance with obligations under the Government Information (Public Access) Act 2009 (GIPA Act) within four months of the end of the council’s reporting year (ie, to October each year).\(^ {188}\)

\(^{183}\) Email from the Ombudsman, 23 October 2015.


\(^{185}\) Ombudsman New South Wales, *PID annual reporting requirements - Template for use by public authorities*, March 2015.


\(^{187}\) Email from the Ombudsman, 23 October 2015.

\(^{188}\) *Government Information (Public Access) Act 2009* (GIPA Act), section 125.
If this requirement were delayed by one month (ie, to November) councils would have more time to prepare the report. The report would also align with councils’ existing annual reporting timetable, therefore reducing an unnecessary burden that was raised by a significant number of councils.

Councils indicated that compliance activities under the GIPA Act are perceived as sizable and increasing. However, GIPA Act obligations occur across all State and local government organisations. Issues of compliance with these obligations have been treated as out of scope as they apply beyond local government.

We note that councils were not always sure of their obligations under GIPA, and this uncertainty may result in councils undertaking unnecessary extra regulatory activities. For this reason, the burden arising from uncertainty can be reduced by OLG taking a larger role in communicating GIPA-related information to councils.

Draft Recommendations

32 That section 125 of the *Government Information (Public Access) Act 2009* be amended to allow councils to lodge annual reports of their obligations under the Act within five months after the end of each reporting year.

33 That the Office of Local Government assist the Information and Privacy Commission to circulate to councils information related to the *Government Information (Public Access) Act 2009*. 
8.8.1 Stakeholder comments

Issues raised around the GIPA Act affecting councils are listed in Box 8.9.

Box 8.9 Stakeholder comments on GIPA reporting and compliance

Burdens identified by councils

▼ GIPA Act annual reports are due four months from the end of the reporting period each year, which does not align with council reporting which is five months from the end of the reporting period (ie, November).

▼ The GIPA Act requires that councils consult with copyright owners prior to release of copyrighted information (see sections 6(6) and 72(2) (c) of the GIPA Act). This process is onerous, and sometimes impossible, when copyright owners cannot be identified, have gone out of business, are deceased or simply cannot be contacted. The EPA Act allows for copyright information to appear publicly on a council's website during the DA exhibition period however the GIPA Act requires that councils remove the information once the DA has been determined. Any access post-determination means councils must undertake consultation with each copyright owner. In circumstances where copyright release cannot be obtained, applicants must view the documents at the council buildings. This involves staff time as a council officer remains with the documents to ensure copyright law is not breached during the inspection process.

▼ Formal applications provide relief from serial applicants lodging multiple applications because the application fee acts a disincentive. However, informal requests provide no disincentive from onerous multiple requests.

Some solutions proposed by councils

▼ Allow reports to be produced in November each year to align with the Local Government reporting timetable.

▼ Alleviate the burden on councils where the copyright owner cannot be identified, contacted and consulted.

▼ Greater guidance from the IPC for councils about priorities for proactive release and for applicants on how to make a request.

Source: Various submissions to IPART and Coffs Harbour workshop.

In response to the issues and solutions raised by councils, the Information and Privacy Commission (IPC):

▼ supported aligning regulatory reporting timetables wherever possible, and

▼ expressed support for consultation with councils to examine effective ways to better report and advance the work already undertaken by the IPC regarding issues such as proactive release.189

189 Letter from IPC, 29 October 2015.
The IPC also responded to the issue of copyright material in development applications. Development applications usually contain intellectual property. In response to councils’ concerns regarding this issue, the IPC has developed a resource to answer frequently asked questions from councils on copyright and the GIPA Act.  

**Box 8.10** Under what conditions can a council provide access to copyright material?

A council may provide a member of the public with:
- a copy of a development application (if the council has a policy of requiring multiple copies of applications)
- a council-made copy if the copyright owner has given permission or if the member of the public is entitled to make their own copy, or
- during the planning and assessment phase of a development application a council may copy and distribute any application information in accordance with the EPA Act.

In other cases, councils may provide the public with access to material but may not make copies for them. Members of the public may be entitled to make copies (by hand, photograph or photocopy) as a fair dealing for research or study, or a fair dealing for criticism or review, under sections 40 or 41 of the Copyright Act.

Councils can make photocopiers available in the area where people access information.


The IPC also discussed how the GIPA Act deals with unmeritorious access applications. Section 110 of the GIPA Act provides a mechanism for the NSW Civil and Administrative Tribunal (NCAT) to make orders restraining the making of unmeritorious access applications. The IPC indicated a Fact Sheet on the operation of s 110 of the GIPA is being developed to provide assistance to councils and agencies.

In response to criticisms of the timeliness of reviews the IPC acknowledged delays in processing access application reviews but stated:
- in April 2015, the backlog of unallocated access applications was cleared
- there was a 14% reduction in ‘cases on hand’ at 30 June 2015, compared with 30 June 2014, and
- the IPC is now positioned to address timeliness in case management, with improvements expected to be realised over the next 12 months.

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191 Email from IPC, 22 October 2015.
8.8.2 Background

The GIPA Act requires councils to provide information access and disclosure to the public.

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**Box 8.11 How does the GIPA Act require councils to provide information to the public?**

The GIPA Act provides four information release pathways, these are the:

- mandatory proactive release pathway which requires councils to release a copy of agency information, free of charge, ideally via the council's website
- authorised proactive release pathway through which all types of agency information can be actively and increasingly released
- informal release pathway which allows agencies to release information in response to an information request (councils are not required to keep a record of informal requests), and
- formal applications to access government information which gives citizens an enforceable right to apply for information by making access applications.

The IPC has a dedicated team which provides advice to agencies and reporting on agency compliance with the GIPA Act.

**Source:** Email from IPC, 22 October 2015.

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We note the IPC has been working with councils to help them meet GIPA Act obligations in a more strategic manner. The IPC has implemented the following initiatives to promote better regulatory practice and compliance, and address regulatory burden:

- a website portal called the ‘GIPA Tool’ which allows electronic submission of reports and assists with better case management and reporting by public sector agencies and councils
- guidance to promote proactive disclosure and minimise unnecessary resource allocation
- guidance to address legislative complexity, such as the interaction with copyright law and the *Privacy and Personal Information Protection Act 1998*, and
- e-learning modules to efficiently guide the agency decision makers.192

The IPC has also recently released its first compliance report on GIPA reporting193 and releases annual reports on GIPA performance.194

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Building and construction regulation is an important aspect of council’s compliance and enforcement functions. It is also an area of keen interest amongst stakeholders of this review. Submissions covered a range of issues related to:

- the relationship between private certifiers and council enforcement
- improvements to the accreditation and regulation of certifiers by the governing body the Building Professionals Board (BPB), and
- a need to reduce the administrative burden of compliance, in both building and fire safety certification.

The Building Professionals Act 2005, which covers council and private certification of buildings, is currently the subject of an independent review by Mr Michael Lambert. The purpose of the Lambert Building Review is to assess the effectiveness of the Building Professionals Act and the NSW building regulation and certification system. The Draft Report was released for public comment in August 2015 and the Final Report is currently being considered by the Government. The Draft Report recommended reforms that include:

- using an evidence-based approach
- improving quality, safety and amenity of buildings
- providing a robust foundation for the expansion of complying developments
- increasing the take up of alternative building solutions, and
- creating a more informed community.

Our recommendations generally seek to support, expand or extend those of the Lambert Building Review. Taken in full, our draft recommendations and the recommendations of the Lambert Building Review would improve the risk-based approach to certification issues, build capacity within councils to undertake these activities and streamline the enforcement of both public and private certifiers.

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### 9.1 Building Certifiers and Compliance Burden

Councils have responsibility for enforcing any breaches of building standards or development consent conditions in relation to building works undertaken under development consent or complying development certificate, even when a private certifier has been engaged. Private certifiers are defined as ‘Public Officials’ under the ICAC Act, with a limited regulatory role.

Building certification and the interplay between council and private certification was a common issue raised by stakeholders both in response to our Issues Paper and in our workshops. Issues raised by councils included:

- a desire for standardisation of forms given to councils
- an extension of the duration of certifier’s licences, and
- a need to improve the process of councils stepping in for a private certifier or enforcing a private certifier’s Notice of Intention (NOI).

The Lambert Building Review released its draft report for stakeholder comment in August 2015. The review found that there was a lack of clarity about the roles, responsibilities, functions and accountability of certifiers which was “clearly a major deficiency.” The review made draft recommendations to improve the functioning of the system and ensure a more flexible, responsive regulatory approach.

If the NSW Government adopts the review’s recommendations many of the regulatory, compliance and enforcement burdens associated with building and construction that stakeholders raised with us would be addressed. Our draft finding in this section reflects our support for the Lambert Building Review’s draft recommendations.

**Draft Finding**

2 The draft recommendations of the *Independent Review of the Building Professionals Act 2005* (Lambert Building Review), if supported by the NSW Government, would:

- Substantially improve the funding and ability of councils to effectively undertake their compliance functions in relation to unauthorised building work and refer certifier complaints to the Building Professionals Board.
- Introduce more effective disincentives (for example, penalties) for unauthorised building work.
- Institute a system of electronic lodgement of certificates and documentation from private certifiers to councils in a standardised form. This should reduce current record management burdens on councils, which would allow the

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196 Independent Commission Against Corruption Act 1988, section 3(1)(k1).
information to be used to inform building regulation policy development and better targeting of council and state resources in building regulation.

- Reduce the frequency of accreditation renewals from annually to every three to five years.
- Create a new category of regional certifier to reduce the accreditation burden on councils and increase the number of certifiers in the regions.

9.1.1 Key Lambert Building Review recommendations

Draft recommendations from the Lambert Building Review that cover issues raised by stakeholders to our review are listed in Box 9.1 below.

Box 9.1 Draft recommendations from the Lambert Building Review

- Consolidate in a single statutory authority, the licensing of building practitioners and accreditation of certifiers (Recommendation 2.1).
- Establish a partnership model with respect to building certification involving the BPB, Office of Building Regulation (OBR), and councils, with consultation with private certifier industry bodies such as the Association of Accredited Certifiers (AAC) and the Australian Institute of Building Surveyors (AIBS) (Recommendations 4.1(iv) and 5.1).
- Implement a practice guide for certifiers with legal effect, and a framework that clarifies the roles of certifiers and councils in relation to development enforcement activities (Recommendations 4.1(i) and 4.2).
- Standardise and digitalise building information that is accessible and transparent and capable of generating performance and outcomes information (Recommendation 3.1).
- Establish an online certifier complaints lodgement and management system with a new complaints management process (Recommendation 8.4) including the removal of the requirement for complaints to be verified by statutory declaration (Table 11.2).
- Revise the accreditation scheme for certifiers, including creating a regional certifier classification and reducing the frequency of certification renewals (Recommendation 7.1).

9.1.2 Stakeholder comments

The issues raised by stakeholders in this area are quite broad, and are summarised by sub-topic in Box 9.2 below.

Box 9.2 Summary of council concerns

**Burden of compliance function of councils in relation to unauthorised building works**

- Compliance function of councils is onerous, costly and inefficient, involving lengthy negotiations, legal action and staff time.
- Frequency of development non-compliances is increasing, as is the cost to councils of enforcing compliance.
- Recent increases in the number of complying development certificates (CDCs) have created a huge increase in complaints to council relating to private certifiers and whether the work certified complies with building standards or development conditions.
- Referrals to the BPB have to be in a particular format, requiring significant information and statutory declarations.
- Private certifiers often issue incomplete ‘Notices of intention’ to issue an Order (NOIs) in relation to non-compliance issues and it is up to councils to sort it out.
- Some developers are gaming the system and seeking development approvals (DAs), construction certificates (CCs), occupation certificates (OCs) and section 68 approvals post construction, which requires additional work from councils that is not covered by fees.

**Standardisation of building certificates provided by certifiers**

- Lodgement of certificates requires substantial resources and record management.
- Costs of lodgement exceed the prescribed fee.

**Accreditation of certifiers**

- Not enough certifiers in the regions – both private and council.
- Councils are unable to attract certifiers because remuneration is lower than for private certifiers.
- Private certifiers will not travel to regional areas because they have enough local work.
- Training requirements are onerous and costly.
- Costly and time-consuming annual renewals of accreditation, for example the requirement for each renewal to be accompanied by a statutory declaration.

*Source:* Various council submissions and questionnaire responses, Sydney, Wagga Wagga, Coffs Harbour and Dubbo workshops.
Solutions proposed by stakeholders are outlined in Box 9.3 below.

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**Box 9.3  Stakeholder-proposed solutions**

**Burden of compliance function on councils in relation to unauthorised building works**
- Allow for greater cost recovery by councils.
- Need for greater enforcement powers and penalty notices in this area.
- Enable councils to recover costs for investigations and referrals to the BPB.
- Greater resourcing for the BPB.
- Give greater guidance to private certifiers regarding the level of investigation and information required in NOIs to make follow-on council enforcement action easier.
- Allow higher charges to gain certification post construction of illegal works to serve as a disincentive.

**Standardisation of building certificates provided by certifiers**
- Increase lodgement fees to better recover costs.
- Create a state-wide central database to improve record maintenance by private certifiers.
- Mandate electronic lodgement in agreed format.

**Accreditation of Certifiers**
- Recognise existing experience and qualifications or provide special dispensations/exemptions from accreditation requirements for regional councils.
- Allow councils to use internal controls (eg, mentoring and allowing higher grade certifiers to oversee work remotely, for example a single A1 certifier within a ROC).
- Make renewal of accreditation less frequent.

*Source:* Various council submissions and questionnaire responses, Sydney, Wagga Wagga, Coffs Harbour and Dubbo workshops.

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Many of the issues raised by councils and other stakeholders regarding the regulatory burdens imposed in the building and construction field are being addressed by the Lambert Building Review. Issues that have either not been addressed by that review, or for which we recommend additional action are discussed in the following sections.
9.2 Certification Fees

Under section 608 of the *Local Government Act 1993* councils may charge for any service it provides, including acting as the Principal Certifying Authority (PCA), subject to the requirements outlined in sections 610A-610F. Stakeholders have raised concerns that they are limited in their ability to recover the costs incurred for certification and associated activities such as travel time.

Our finding clarifies that councils are able to charge cost recovering rates for certification services, including travel expenses. It confirms that there is no constraint on a council’s ability to recover the cost of providing certification services, particularly in cases where the initial PCA is no longer available and/or there are non-compliance issues to be addressed. Our draft recommendation seeks to ensure there is appropriate guidance on indicative travel costs for councils in regional and rural areas.

**Draft Finding**

3 That under the *Local Government Act 1993* councils can set their fees for certification services to allow for full cost recovery. These fees can include travel costs.

**Draft Recommendation**

34 That the Building Professionals Board include information on travel charges for certification services in regional areas when developing an indicative fee schedule.

9.2.1 Background and Stakeholder Comments

Councils have the PCA function under the *Environmental Planning and Assessment Act 1979*. In regional areas council certifiers may be the only ones available. Given the large areas these councils cover this can lead to long travel times for council staff in order to conduct the necessary site inspections.

Regional councils expressed concern about their inability to recover these travel costs, leading to a substantial disparity between the cost to provide certification services and the amount recouped in fees.198

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198 Wagga Wagga workshop, 15 September 2015; Wentworth Council Shire, submission to IPART Issues Paper, August 2015, p 1.
However, the Building Professionals Board (BPB) has noted that councils are free to set their own fees at a level which covers their costs, subject to including them in their draft operational plan and providing 28 days public notice before any changes. A desktop review of council fee schedules indicates that some councils already charge for travel time. Bourke Shire Council for example, charges $1/km for distances over 50km from the town centre.199 Other councils, such as The Hills Shire Council, have a fee quote estimation facility available on their website.200

The Lambert Building Review considered the issue of certification fees and recommended that the BPB, working with industry associations develop an indicative fee schedule, including a schedule of supplementary charges. This schedule would provide guidance on appropriate fees both to public and private certifiers – setting a soft floor price – as well as providing members of the public who are seeking to engage a certifier with an estimated price range.

Including a section on travel charges in the indicative fee schedule would have two key benefits. First, it would serve to inform regional and rural councils that it is acceptable to charge for travel costs associated with conducting site inspections, and that these can vary from client to client. Second, it would provide councils with guidance as to what to charge for this travel time, taking into account both the certifier’s time and any transport costs.

### 9.3 Fire Safety Statements

The Environmental Planning and Assessment Regulation 2000 requires that the owners of buildings in Classes 2 to 9 submit Annual Fire Safety Statements (AFSS) to both the council and NSW Fire and Rescue (FRNSW). The AFSS certifies that the building’s fire safety measures are correctly installed, maintained and meet the relevant standard of performance. Stakeholders have raised concerns about the costly administrative burden associated with these reports and the difficulties in follow up enforcement that is required for late or incomplete statements.

Our finding supports the draft recommendations of the Lambert Building Review which proposed an online building manual for all new Class 1b to 9 buildings. This manual, which would allow the online submission of AFSSs would directly address many of the burdens in this area identified by stakeholders in our review, particularly removing the requirement for councils to compile AFSS records, streamlining the process of submission for building owners and moving the process online.

Our draft recommendation extends the Lambert Review’s work by calling on the relevant agencies to consider the needs of councils when designing the online manual and ensure that it addresses these identification issues.

Draft Finding

4 That the online Building Manual, proposed in the e-building initiative draft recommendation of the Lambert Building Review, would remove the current burden on councils of collecting and maintaining records of annual fire safety statements.

Draft Recommendation

35 That the Building Professionals Board or the proposed Office of Building Regulation (in consultation with Department of Planning and Environment, Fire & Rescue NSW and local government) design the new online system for submitting annual fire safety statements (AFSS) to allow councils to identify buildings in their area that require an AFSS, and where follow up or enforcement action is required.

9.3.1 Stakeholder Comments

Stakeholders noted two main burdens in this area:

▼ the duplication of effort and the cost involved in compiling the AFSSs and maintaining a register of essential services within each proscribed building, and

▼ the highly resource intensive and onerous enforcement activities associated with identifying relevant buildings in their area and chasing overdue AFSSs.

Councils’ comments are summarised in Box 9.4 below:
Box 9.4 Stakeholder comments

**AFSS administration**
- Maintenance of the AFSS register requires highly qualified staff that are hard to retain on council wages.
- AFSS provisions are costly with one council estimating they cost approximately $200,000 per annum to effectively administer.
- There is a duplication of effort involved as statements are submitted to two bodies, creating coordination issues when errors in the AFSS are identified and corrected.

**AFSS enforcement activities**
- Follow up enforcement is burdensome, with councils required to send up to 15,000 reminder letters to building owners on an annual basis.
- Many building owners are not aware of their obligations, so that councils must send out multiple reminder letters.
- Follow up actions on overdue statements can lead to court appearances, which diverts council’s attention and resources.

*Source:* Various council submissions and questionnaire responses.

The Lambert Building Review has recommended the creation of an online building manual for each building. This would be maintained by the building owner and accessible by both FRNSW and councils. Such a system would enable online submission of annual fire safety statements as well as provide a method for tracking additions or alterations to the building. The building manual forms part of the e-building project which is focused on standardising data, coverage and access. The e-building project would be a joint project between OLG, councils and the Office of Building Regulation (OBR).

In creating this e-building project it would be valuable for the lead agency (either the BPB or the proposed OBR) to consider how best to incorporate council AFSS enforcement functions into any online portal. This would include features such as tracking current and new buildings requiring AFSS in a given council area, automatic generation of reminder or overdue notices and/or an ability for councils to identify when a building’s next statements are due or when the owner has failed to respond to a reminder notice in the appropriate timeframe. Features such as these would substantially reduce the time, effort and resources that councils must spend dealing with annual AFSS collection and any resultant enforcement action.

9.3.2 Background

The fire safety schedule for a building is designed to identify a building’s essential fire safety measures (normally for BCA building classes 1b to 9) which are required to be maintained by the building owner and certified by an annual fire safety statement. These annual statements are required to be sent to councils. The owner must also provide a copy of these statements to FRNSW.

The Lambert Building Review found that there is no convenient access to information about a building’s systems such as its fire safety systems or any Alternative Solutions that the building incorporates. To resolve this issue the review recommends the establishment of an online building manual, eventually covering every class 1b-9 building in the State. According to the review:

The building manual would consolidate all relevant information on the building to facilitate future management and maintenance, including an up to date building plan, information on all critical building elements, including fire safety system, detailed information on all alternative solutions and the annual building/fire safety review.

Separately, draft recommendation 17 of IPART’s *Local Government Compliance and Enforcement – Draft Report* recommended the online submission of these statements.

By being maintained online, this manual would be accessible to both relevant councils and FRNSW without each having to be sent separate copies. This would reduce the reporting burden on councils by making the requirement to organise, track and collect AFSS easier. An online system would also improve councils’ ability to oversee the ongoing certification and recertification of buildings’ fire safety systems, quickly find any non-compliant buildings in their area and track which buildings have yet to send in their annual certification checks. This would streamline enforcement further.

9.4 Fire safety enforcement actions

Councils are required to follow up fire safety issues identified by private certifiers or reported to them by FRNSW. Councils must determine whether to issue an Order for the building owner to rectify the fire safety issues identified.

There are concerns about the mechanics of fire safety enforcement and compliance that stem from a lack of guidance in the regulations on what constitutes a ‘significant fire safety issue’. This has created an environment where every fire safety issue is treated as significant. Additionally, the requirement that the full council consider a fire safety report before action is taken slows down effective enforcement. The decision whether to act and issue an order would be better made at the operational level by the General Manager.

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203 This covers commercial buildings and multi-resident buildings such as apartment blocks.
Our draft recommendations would provide certifiers and councils the necessary
guidance to make appropriate assessments about fire safety, while speeding up
necessary fire safety enforcement action. They emphasise the use of discretion
and the use of a risk-based approach when assessing what fire safety breaches
are considered ‘significant’, and provide for faster follow up enforcement action
by council where required.

Draft Recommendations

36 That the *Environmental Planning and Assessment Regulation 2000* be amended
to clarify what constitutes a ‘significant fire safety issue’.

37 That section 121ZD of the *Environmental Planning and Assessment Act 1979* be
amended to allow councils to delegate authority to the General Manager to
consider a report by the Fire Brigade, make a determination and issue an order,
rather than having the report considered at the next council meeting.

9.4.1 Stakeholder Comments

Currently, the *Environmental Planning and Assessment Regulation 2000* requires the
certifying authority to give written notice to councils whenever they become
aware of a ‘significant fire safety issue’.205 However, the regulation provides no
definition as to what constitutes ‘significant’ in this context. In its submission to
this review, Shoalhaven City Council noted that the lack of certainty about
whether a given fire safety issue is significant or not has led certifiers to notify
councils about any and all departures from the BCA on fire safety issues.206

A council notified by a certifier must conduct a fire safety audit, even if the issue
at hand is relatively minor, for example an emergency exit light being out. These
audits represent a compliance burden, both in the cost of the audit and the
opportunity cost of other work council staff could be undertaking.

Where an audit is conducted and a significant fire safety issue is confirmed,
warranting a formal response, the complaint report must be referred to the next
full council meeting in order to determine whether a Number 6 or 8 Order
should be issued.207 In its submission to this review, The Hills Shire Council
noted that this requirement creates unnecessary delays when an immediate
response could be required. They suggest that this power be delegated to the
General Manager, who could inform the full council when appropriate.208

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205 *Environmental Planning and Assessment Regulation 2000*, clause 129D(1)(c).
206 Shoalhaven City Council, questionnaire response, August 2015.
207 *Environmental Planning and Assessment Act 1979*, section 121ZD.
208 The Hills Shire Council, questionnaire response, August 2015.
FRNSW supports this change, arguing that there is no value in requiring these orders to go to council as the councillors would be relying on their staff’s expertise about the issue. Handling this issue at the operational level would speed up enforcement of potentially serious fire safety breaches while lowering the administrative burden on councils.

9.4.2 Background

Amendments made to the *Environmental Planning and Assessment Regulation 2000* came into force on 19 July 2014. These amendments introduced new fire safety provisions including a new obligation for certifying authorities to notify councils of any ‘significant’ fire safety issues.

The Department of Planning and Environment has published a Technical Guideline for certifiers that explains their obligations under these new regulations. This guideline includes a section discussing the identification of a significant fire safety issue and providing a short list of examples. However, this guidance does not appear to be sufficient, given that many certifiers lack specific expertise in fire safety and are unable to rely upon the self-certification of the fire safety system installers. This means that certifiers may be risk-adverse on fire safety issues, preferring to notify councils of any departure from the BCA.

On fire safety issues, the Lambert Building Review has recommended accrediting suitably qualified and experienced personnel to design, install and commission critical building systems and elements, such as fire safety systems. The Lambert Review identified that a gap exists in the current certification process, namely that certifiers do not necessarily have the specialist skills to assess critical building elements involved in fire safety and are legally unable to rely on the party that installs and designs these elements.

If the reforms outlined in the Lambert Building Review proceed, certifiers would be able to use these newly accredited specialists to certify the fire safety aspects of developments. This should result in a substantial reduction in the number of unnecessary notifications that councils receive from certifiers.

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208 Information provided to IPART by Fire & Rescue NSW, 2 November 2015.
This chapter examines planning, reporting and compliance burdens identified by councils relating to their public land and infrastructure function.

The issues relate to:

- Crown reserves reporting and management
- Crown road closures
- Plans of management for community land
- National heavy vehicle regulation, and
- Impounding unattended boat trailers, caravans and advertising trailers.

Our draft recommendations in these areas follow a risk-based regulatory approach by recognising existing council capacity and providing greater support to councils undertaking new regulatory functions. They also aim to clarify and streamline legislative provisions to make it easier for councils to undertake their assigned roles.

Other burdens raised by councils on which we are not proposing to make recommendations are discussed in Appendix B, Table B.6. Some matters raised were deemed out of scope. These are listed in Appendix C.

### 10.1 Crown reserves reporting and management

Councils manage many Crown reserves for the State under the *Crown Lands Act 1989* (CL Act). As managers of Crown reserves, councils have various responsibilities, including submitting reports, preparing plans of management and obtaining Ministerial approval for leases and licences. For similar activities managing their own community land, councils are subject to different requirements under the *Local Government Act 1993* (LG Act). These similar land management activities could be undertaken more efficiently if they were subject to a single consistent regulatory framework.
The NSW Government has been reviewing Crown land management and the Crown Lands Legislation since 2012. Many of the issues raised by stakeholders to this review have been raised as part of the NSW Government’s ongoing Crown lands reviews. From these reviews, the NSW Government has proposed:

- transfer of Crown reserves with local interests to councils (as Community Land in most instances), and
- Crown reserves managed by councils should be subject to LG Act requirements.213

These proposals would require legislative change through proposed new Crown lands legislation.

Our draft recommendations are consistent with, and support, the NSW Government’s reform proposals. They would bring all land managed by councils under the regulatory framework provided by the LG Act.

Draft Recommendations

38 That the NSW Government transfer Crown reserves with local interests to councils, as recommended by the NSW Crown Lands Management Review and piloted through the Local Land Program Pilot.

39 Consistent with its response to the Crown Lands Legislation White Paper, that the NSW Government ensure that Crown reserves managed by councils are subject to Local Government Act 1993 requirements in relation to:

- Ministerial approval of licences and leases, and
- reporting.

10.1.1 Stakeholder comments

Through our consultation process, we received substantial comment on burdens associated with council management of Crown reserves and possible solutions to address these burdens. The burdens identified by stakeholders and some solutions they proposed are summarised in Box 10.1 below.

Box 10.1  Summary of stakeholder comments

Crown reserves reporting:

- Separate reports are required for each Crown reserve managed by a council and with an excessive level of detail. Separate reporting serves no purpose. It should either be removed or the level of detail reported should be reduced.

- It is unclear what DPI Lands does with councils’ Crown reserves reports.

- Crown reserves reporting is too complex and of little use to councils.

- Reporting is required through a poorly designed and functioning online system with little flexibility.

- The same requirements apply to large reserves that have lots of different activities and generate significant income as apply to small reserves with little or no activity and/or income. The reports need to be streamlined and tailored significantly.

- As reporting is so onerous, if a council does not intend to apply for a grant for a Crown reserve, it may not submit an annual report for the reserve. There are no consequences for councils for non-submission.

Crown reserves management

- Requirement for Ministerial approval of all leases and licences over Crown reserves is excessive. Councils as trust managers should be able to issue leases and licences for land they manage.

- There are numerous examples where simple lease or licence agreements have been held up for over 12 months while waiting for approval.

- Adoption and amendment of a plan of management under the CL Act requires Ministerial consent. This requires significant communication with a State agency that has no local knowledge. The whole requirement to seek Crown consent could be removed if councils had the authority to deal with these matters themselves.

Source: Various submissions to IPART, and comments from councils at Coffs Harbour, Wagga Wagga and Dubbo workshops.

In its submission to the Issues Paper, the Department of Primary Industries identified that potential savings could be achieved by adopting a more risk-based and aggregated reporting model for Crown reserve trusts based on councils’ internal reporting systems.\(^{214}\) While similar suggestions were made by councils in their submissions (as outlined in the Box above) councils at our workshops argued for more substantial reform, including:\(^{215}\)

- transferring Crown reserves to councils (or, alternatively, handing them back to the State), and

- having one regulatory regime (the LG Act) apply to all land managed by councils.

\(^{214}\) Department of Primary Industries submission to IPART Issues Paper, August 2015.

\(^{215}\) Coffs Harbour Wagga Wagga and Dubbo workshops, 10, 15 and 16 September 2015.
10.1.2 Background

The burdens councils have identified with various aspects of the Crown reserve management and reporting arrangements are part of a broader issue – that councils manage their own (community) land under one regulatory regime (the LG Act) and Crown reserves under a different regulatory regime (the CL Act).

Councils and the Department of Primary Industries Lands (DPI Lands) have identified improvements that could be made to the existing Crown reserves regime to minimise these burdens. However, a more effective and lasting solution, involving structural reform, is being progressed through the NSW Government’s review and reform of Crown land management. These reforms should bring all land managed by councils under the regulatory framework provided by the LG Act.

While these reforms are being implemented, DPI Lands could adopt the risk-based and aggregated reporting model for Crown reserve trusts it has proposed, to provide a more immediate reduction in councils’ reporting burden.

10.2 Crown road closures

Crown public roads provide access to many privately owned and leasehold lands where little or no subdivision has occurred since the early 19th century. They are often referred to as ‘paper roads’ as most have not been formed or constructed.

Road closures involve either:

- closure of unconstructed public roads - the land vests in the Crown upon closure, or
- closure of public roads which are either constructed or have been the subject of public expenditure – the land vests in council upon closure.

Both types of road closure occur under a process prescribed by the Roads Act 1993, involving public consultation and assessment of the impact of the road closure. This process takes a minimum of seven months to complete and, due to the number of applications DPI Lands has on hand, it can take considerable time for any application to be processed. As at September 2015, DPI Lands had approximately 7,000 road closure applications waiting to be processed and no specific resources available to expedite council applications.\(^{216}\)

Councils have identified burdens associated with their involvement in the Crown road closure process relating to the excessive requirements of the process and the costs to councils in managing it.

\(^{216}\) Department of Primary Industries Lands, Council Road Closures Frequently Asked Questions, September 2015.
From June 2014, DPI Lands put new arrangements in place for the closure of roads that vest in councils to enable councils to manage part of the road closure process. They came about because of council dissatisfaction with long waiting times for processing road closure applications.

The NSW Government streamlined the road closure and disposal process (to an average of 7-month minimum time to complete) through administrative efficiencies. It also increased available resources. However a significant backlog in applications continues, despite councils now undertaking some of the DPI Lands’ responsibilities in the road closure process since mid-2014.

To address this backlog in road closure applications, the NSW Government should:

- streamline the statutory process for closing roads, including the arrangements for advertising road closure applications, and
- dedicate even more resources to reducing the backlog.

Streamlining the statutory process should reduce the costs of all parties - councils, DPI Lands and private landholders. This would require legislative change and consideration of procedural fairness for affected landholders. Arrangements for advertising road closure applications are one area that could be streamlined. They take longer than comparable processes for development applications under the Environmental Planning and Assessment Act 1979 and regulations.

The large backlog in road closure applications places pressure on councils to undertake a greater role in the road closure process (for roads that vest in council) at their own expense. Therefore, reducing the backlog in road closure applications would give councils genuine choice as to whether they undertake a greater role or whether they leave this to DPI Lands.

Draft Recommendations

40 That the NSW Government streamline the statutory process for closing Crown roads, including the arrangements for advertising road closure applications.

41 That the NSW Government reduce the backlog of Crown road closure applications to eliminate the current waiting period for applications to be processed.

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10.2.1 Stakeholder comments

The burdens identified by councils in relation to road closures, and measures to address these burdens, are summarised in the Box below.

Box 10.2 Summary of stakeholder comments

- Council must now handle all neighbour and authority notification and public advertising of a proposed road closure on behalf of DPI Lands. Council must also provide formal confirmation to DPI Lands that the public road is gazetted or owned by council. This procedure used to be handled by DPI Lands but the responsibility has been shifted to councils.
- Councils should be reimbursed for their costs in undertaking a DPI Lands function.
- The process for road closure, creation of land title and eventual sale of closed road is complex, onerous and unnecessarily long.
- There should be a less onerous process for minor, non-controversial road closure applications.
- The proceeds of sale from unconstructed crown roads should vest in councils, not the Crown.

Source: Various submissions to IPART, and comments from councils at Wagga Wagga and Dubbo workshops.

DPI Lands advises that the new arrangements for councils to manage the process for closure of roads that vest in councils were developed in consultation with councils and LGNSW and in response to council requests for a faster turnaround. It has developed a suite of documentation and online advice to support councils managing road closures. It considers that most councils are satisfied with these arrangements as a way to expedite their own applications but notes that some smaller councils may not have the necessary skills or resources to manage the road closure process.

DPI Lands considers that it is appropriate for councils to be responsible for the statutory requirements of the road closure process, including advertising and dealing with objections, where it is council requesting the road closure.218

In relation to stakeholder comment about shifting responsibility for road closure processes from the State Government to local government, the issue of cost-shifting is discussed more broadly in Chapter 5.

218 Information provided to IPART from DPI Lands, 29 October 2015.
10.2.2 Background

The closure of Crown roads which are not required for public access has both public and private benefits. It can rationalise the Crown road network without compromising the broader public interest. It can also benefit private landholders who purchase closed roads that are within and adjacent to freehold property. These benefits include:

- certainty of ownership
- consolidation of holdings
- no requirement for an enclosure permit or need to pay rent
- use of the land for purposes other than grazing
- no requirement to make the road available for public access, and
- simplified conveyancing in rural areas.

The road closure process prescribed by the Roads Act 1993 is intended to balance the rights of applicants, public authorities (such as councils, Local Land Services, and National Parks) and affected (usually adjoining) landholders. The advertising and notification requirements that form part of the road closure process are intended to protect these rights. Currently written submissions regarding a proposed road closure can be lodged within a 28-day advertising period.

DPI Lands implemented an online search facility for road closure applications in 2013 to improve the consultation process.

Where agreement can be reached between neighbours, processing of a road closure application is generally less complex and streamlined. However, if agreement cannot be reached with other affected landholders, the process can be delayed by the time it takes to mediate any submissions to the road closure application.

The advertising and notification process established under the Environmental Planning and Assessment Act 1979 and regulations for assessment of development applications (DAs) involves similar rights and interests as arise in a road closure application. The advertising and notification period for DAs is 14 days, compared with 28 days for road closure applications. This is one area of the road closure process that could be considered for streamlining.

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220 Environmental Planning and Assessment Regulation 2000, cl 89(3).
10.3 Community land – plans of management

Under the *Local Government Act 1993* (LG Act), councils must prepare a plan of management (PoM) of community land. Some types of community land require separate PoM; other types may have a PoM that applies to several areas.

The PoM provisions of the LG Act prescribe the content of plans, public notice, notification and consultation requirements and the process for amending and revoking plans.

Councils argued that PoM requirements are excessive and that they should have greater flexibility to consolidate planning and associated consultation activities for community land, using existing Integrated Planning and Reporting (IP&R) processes.

There is scope to streamline the public notice and consultation requirements for PoMs for community land using the existing IP&R processes.

This would significantly reduce council costs associated with public notice and consultation for PoMs for community land.

**Draft Recommendation**

42 That the NSW Government streamline the provisions of the *Local Government Act 1993* relating to plans of management for community land to align public notice and consultation with councils’ community engagement for Integrated Planning and Reporting purposes.

**10.3.1 Stakeholder comment**

Councils identified the following issues related to PoMs for community land:

- The requirement for a PoM for each parcel of community land is excessive. Some parcels of community land do not need a PoM.221
- PoMs are not relevant or accessible for the community. They do not read them.222
- The processing for drafting and consulting on a PoM is onerous and costly. It can extend for a year or more.223
- With the deployment of Integrated Planning and Reporting that requires engagement with communities and development of short and medium term strategies for services and assets, the requirement for a PoM for all community land is redundant and should be removed.224

221 Sydney workshop, 8 October 2015.
222 Wagga Wagga workshop, 15 September 2015.
223 Albury Council and Maitland City Council submissions, August 2015.
224 Maitland Council submission, August 2015.
Councils suggested that community consultation on the management of a parcel of community land should occur as part of a Delivery Program (IP&R). This would deliver better outcomes at less cost to council and community.\textsuperscript{225}

### 10.3.2 Background

Under the LG Act, councils must prepare a PoM for community land.\textsuperscript{226} These plans help to determine the use and management of the community land.

A PoM may apply to several areas of community land (a generic plan) or to just one area (a specific plan). Councils can determine whether a generic or specific plan will be prepared for its community land, except for the following categories of community land that must have specific PoMs:

- community land comprising the habitat of endangered species (section 36A)
- community land comprising the habitat of threatened species (section 36B)
- community land containing significant natural features (section 36C), and
- community land containing an area of cultural significance (section 36D).

A PoM for community land must identify:\textsuperscript{227}

- the category of the land (eg, park, sportsground, bushland)
- the objectives and performance targets of the plan with respect to the land
- the means by which the council proposes to achieve the plan’s objectives and performance targets, and
- the manner in which the council proposes to assess its performance with respect to the plan’s objectives and performance targets.

The LG Act prescribes the consultative process by which each PoM must be made.\textsuperscript{228} This process includes a minimum of public exhibition of a draft PoM, public hearing and consideration of submissions before each PoM can be adopted. Further public consultation is required if a draft PoM is amended.

### 10.4 National Heavy Vehicle Regulation

One of the tasks of the recently created National Heavy Vehicle Regulator (NHVR) is to take over the coordination of road access requests from state road authorities, including councils. As part of this change, new timeframes and standards were introduced in order to standardise road access conditions nationally. However, given the slow start of the NHVR, concerns were raised

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\textsuperscript{225} Maitland Council submission, August 2015 and Wagga Wagga workshop, 15 September 2015.

\textsuperscript{226} \textit{Local Government Act 1993} section 36(1).

\textsuperscript{227} \textit{Local Government Act 1993} section 36(3).

\textsuperscript{228} \textit{Local Government Act 1993} sections 38 to 40A.
about the lack of support for councils, particularly those councils in regional/rural areas who may not have access to the appropriate level of expertise to undertake these road access requests. To support councils in the interim, RMS has developed a Road Manager Toolkit which covers the process of receiving and responding to access requests.\(^{229}\) RMS also established a sub-committee on freight connectivity.

While these steps are useful, additional support is required such as ready access by councils to expert advice. Without this expertise there is a risk of inconsistency between different councils’ assessments or of unnecessary delays in approvals. Our draft recommendation in this area would serve to build the capacity of councils to perform these assessments, meaning that they are able to properly undertake a risk-based approach to heavy vehicle access.

**Draft Recommendation**

43 That Roads and Maritime Services provide greater support for councils to develop the competency to conduct route access assessments and process heavy vehicle applications. This support should be focused on developing the competency and skills within councils to perform these regulatory functions.

**10.4.1 Stakeholder Comments**

The requirement for councils to process road access applications places a burden on smaller, regional and rural councils who may not have the necessary expertise to make the technical assessments required. For some councils the frequency of these requests is insufficient to justify a dedicated resource. Albury City Council argued that it lacks staff with appropriate expertise and qualifications to undertake this task.\(^{230}\) This means that applications for access take longer, cost more and are more likely to contain errors or inconsistencies than they would if councils had access to appropriate advice.

Albury City Council suggested that the State Government provide a qualified resource to assist in these applications, perhaps at the ROC or Joint Organisation level.\(^{231}\)

Our recommendation in the *Local Government Compliance and Enforcement – Draft Report* regarding an interim unit received strong support. The Australian Logistics Council in its submission noted that:

> It is imperative that something like the proposed interim unit to provide the assistance to local government set out in the recommendation be established if the NHVR is unable to provide the necessary technical assistance.\(^ {232}\)


\(^{230}\) Albury City Council, submission to IPART Issues Paper, August 2015.

\(^{231}\) Ibid.

Support for an interim unit was also strong amongst both regional and metro councils. Supporting submissions generally recognised that councils do not have the resources to regulate heavy vehicles on their own and need assistance in this area. Submissions also recognised the need for consistency between councils, which would be enhanced by appropriate guidance from RMS.

The importance of this issue will diminish over time as more pre-approved routes are established, however past analysis by IPART indicates that there would be substantial benefit to interim measures by RMS to assist councils in this area.

10.4.2 Background

Heavy vehicles greater than 19 metres in length or 42.5 tonnes mass, (eg, B-Doubles), are classified as Restricted Access Vehicles (RAVs). They face limitations on how they are permitted to access the road network. They require prior approval by the road authorities, which may entail conditions such as limited hours of operation or weight restrictions.

Under section 7 of the Roads Act 1993 councils are designated the road authority for local and regional roads within their local area. They are the approval authority for heavy vehicle access applications there. Many freight movements require the use of local roads for at least a portion of their journeys.

The NHVR officially took over coordination of heavy vehicle access requests on local roads from RMS on 10 February 2014. It was intended that the NHVR would assist councils by:

- Providing support and guidelines for councils making road engineering assessments, including the development of an online technical road assessment tool.
- Providing technical assistance to councils for specific assessments.
- Building a broader access management system, to identify gaps in the road access network.

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233 For example see submissions from Albury City Council, Bankstown City Council, Shoalhaven City Council, Blacktown City Council, Marrickville City Council and Penrith City Council, submissions to IPART, Local government compliance and enforcement – Draft Report, July 2014.


However, due to extensive processing delays by the NHVR, RMS has been given co-delegation powers to grant certain access permit applications for travel within state borders. This has meant that local councils must conduct access request assessments, without the planned support infrastructure from the NHVR. This has led to substantial burdens for councils without ready access to appropriate skills and expertise.

In our Local Government Compliance and Enforcement – Draft Report we recommended that an interim unit within RMS be funded to provide assistance to councils conducting road access requests until the NHVR provided this support. We made this recommendation in light of analysis conducted by CIE which found a net benefit of $54.9 million a year from improved approval times and reduced red tape.

10.5 Impounding unattended boat trailers, caravans and advertising trailers

The long term on-street parking of boat trailers, caravans and advertising trailers in council areas is an ongoing source of frustration for many members of the community and for councils who have argued that they do not have appropriate powers to deal with this issue. The issue is greater in high density areas with limited on-street parking.

The recent Impounding Amendment (Unattended Boat Trailers) Act 2015 has partially addressed this issue by clarifying when a boat trailer is unattended and providing council officers powers to impound unattended boat trailers. However, these new powers do not extend to other type of trailers and caravans which are causing similar issues. This leaves a gap in council enforcement powers. Our draft recommendation would clarify these powers by expanding the recently introduced amendments to the Act to include other types of trailers.

Draft Recommendation

44 That the Impounding Act 1993 be amended to treat caravans and advertising trailers in the same way as boat trailers when considering whether they are unattended for the purposes of the Act.

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237 IPART, Local government compliance and enforcement – Draft Report, October 2013, p 266.

10.5.1 Stakeholder comments

Canada Bay City Council argued that the lack of direction regarding what counts as an ‘unattended’ article in the Impounding Act limits the council’s ability to move obstructing vehicles in a timely manner.\(^\text{239}\) Attendees at the Coffs Harbour workshop stated that the lack of definition means that abandonment is too difficult to prove, making the Act unworkable.\(^\text{240}\)

In its submission to IPART’s draft report on *Local Government Compliance and Enforcement* North Sydney Council also raised the issue of parking for trailers. The council noted the high demand for on street parking around public transport hubs, educational facilities and business precincts. They argued that long term parking of boat trailers, caravans and signage trailers is increasingly taking up the limited on-street spaces. The current lack of definition for what constitutes abandonment means that councils are limited in their ability to ensure a turnover of parking spaces.\(^\text{241}\)

These submissions highlight a potential gap in the legislation. While the issue with boat trailers has been dealt with, the wording of the legislation means that similar issues with other vehicles and non-boat trailers remains unaddressed. By amending the Impounding Act to include other types of trailers this recommendation would clarify for councils when they can act which would improve their ability to conduct enforcement activities in this space.

\(^{239}\) Canada Bay City Council, questionnaire response, August 2015.
\(^{240}\) Coffs Harbour workshop, 10 September 2015.
Management of companion animals is a key area of regulatory responsibility for councils. Councils raised reporting and compliance burdens in relation to:

- using the Register of Companion Animals (the Register), and
- processing companion animals registration fees.

Our draft recommendations seek to build on the NSW Government’s commitment to redesign and modernise the Register and registration system, and implement one-step online registration. We recommend that the Register be redesigned to have certain capabilities that would reduce the current reporting and compliance burdens on councils. These would include automated collection of pound data and a system of direct payment of funds from registration fees to councils.

Other burdens raised by councils on which we are not proposing to make recommendations are discussed in Appendix B, Table B.7. An additional matter raised was deemed out of scope. This is listed in Appendix C, Table C.1.

### 11.1 The Register and registration fees

The Register is kept centrally by the Director General of the Office of Local Government (OLG). Councils are required to enter animal identification information (obtained at the time of microchipping an animal) and registration information (obtained at the time an owner registers an animal) in the Register. Councils can also access information held on the Register to assist them in undertaking their regulatory responsibilities. The current system is predominantly paper-based and requires manual data input to the Register (which was created in 1998).

Councils have raised a number of reporting and compliance burdens resulting from inefficiencies with the Register, including:

- time taken to enter paper-based animal identification and registration data
- time and resources taken to follow up animals microchipped and identified in the Register

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difficulty in enforcing penalty notices, resulting in wasted time and ineffective regulation

- inability to search the Register by owner details

- inability to obtain useful information from the Register, as data is not Local Government Area (LGA) specific, and

- onerous data requirements in the Register in relation to cats and dogs processed by pounds.

Councils also raised administrative burdens in collection, reconciliation and reimbursement of registration fee revenue. Registration fees are used to fund councils’ and OLG’s companion animal responsibilities. According to councils, considerable delays are experienced before OLG reimburses fee revenue to councils.

In February 2014, the NSW Government committed to undertake a comprehensive review and redesign of the Register and registration system. This is currently being undertaken by OLG. The redesigned Register and registration system would implement one-step online registration.

OLG’s project to redesign and modernise the Register provides a unique opportunity to reduce or remove current burdens on councils. We recommend that the new Register should have the functionality to enable online, one-step registration and online change of details. It should also have useful search and report capabilities, automated data collection, facilities for direct payment of fees and funding to councils, and adequate pet owner identification details. This would considerably reduce the burdens on councils, as councils would:

- not be responsible for manually inputting animal identification or registration details in the Register

- not have to follow up registrations after microchipping

- not waste resources on issuing penalty notices they can’t enforce

- be able to obtain more useful data and reports from the Register to assist them in undertaking their regulatory responsibilities

- not need to manually input pound data in the Register, and

- not administer fee collection, reconciliation and remission.

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Draft Recommendations

45 That the Office of Local Government’s redesign and modernisation of the central Register of Companion Animals includes the following functionality:

- online registration, accessible via mobile devices anywhere
- a one-step registration process, undertaken at the time of microchipping and identifying an animal
- the ability for owners to update change of ownership, change of address and other personal details online
- unique identification information in relation to the pet owner (i.e., owner’s date of birth, driver licence number or Medicare number)
- the ability to search by owner details
- the ability for data to be analysed by Local Government Area (not just by regions)
- the ability for data to be directly uploaded from pound systems, and
- centralised collection of registration fees so funding can be directly allocated to councils.

46 That the Companion Animals Act 1998 and Companion Animals Regulation 2008 be amended to require unique identification information in relation to the pet owner (i.e., owner’s date of birth, driver’s licence number or Medicare number), to be entered in the register at the time of entering animal identification information and when there is a change of ownership.

11.1.1 Stakeholder comment

Administrative, reporting and compliance burdens arising from companion animals responsibilities were raised by numerous councils. These concerns related to the Register and registration process, reporting on animals in pounds and processing companion animals fees.

The burdens raised by councils, and measures to address them are summarised in Box 11.1 below.
Box 11.1 The Register and registration process

The Register - council concerns and proposed solutions:

- Councils duplicate data and maintain their own registers because OLG’s central register is not flexible enough for council use (eg, inspection details). A system upgrade is needed, which should include compatibility with iPads so the register can be accessed in the field and capture other information (eg, photos, GIS, field information).

- The central register should have the capacity to pair with council online registration systems, so it can be automatically updated. Sutherland Shire Council offers online registration but council staff have to re-key the information into the register.

- Can’t search by owner’s details in the central register.

- Useful data from the central register is not readily available to councils and reports are inadequate (eg, information on registered animals in a LGA is not available. Register only provides clustered data.) Should be able to analyse complaint data to focus resources and target campaigns (ie, pull out LGA-specific data, not clustered data).

- Difficult to enforce penalty notices without mandatory owner identification requirements – results in insufficient identification information in the central register. Should include drivers licence or vehicle registration details to assist enforcement and State Debt Recovery Office (SDRO) recovery of penalty notices.

The registration process - council concerns and proposed solutions:

- The registration process results in excessive data entry for councils. Pet owners and microchippers/vets should be able to directly enter and amend registration details online, and one-step microchip and registration of pets is required.

- Following up pet owners who have not registered (ie, sending out reminders) is a big burden on councils. Potential to share the burden of following up registration with Authorised Identifiers (ie, vets/microchippers).

- Council often cannot match animal registration information to the animal identification information because the vet has not entered the information properly, which results in a refund and return of the application.

- The administrative burden of the registration process is unpredictable – vets can drop off 200 animal identification forms to councils at a time, which must be entered into the register within three days.

Sources: Various submissions and questionnaires to IPART and comments from councils at Coffs Harbour, Wagga Wagga and Dubbo workshops.
The burdens raised by councils in relation to reporting on animals in pounds, and measures to address these burdens, are summarised in Box 11.2 below.

**Box 11.2  Reporting on animals in pounds (cats and dogs survey)**

**Council concerns:**
- Poorly coordinated, poorly designed, overly prescriptive and unduly costly reporting with no benefit to councils.
- The central data collection role of councils on behalf of numerous organisations eg, pounds and vets is time-consuming and inefficient.
- It is time-consuming to complete this survey with little use of the data - data is not checked or used, and has little value.
- Monthly reports are too frequent.

**Solutions proposed by councils:**
- The reporting process would benefit from templates and technologies that make the upload of requested data by councils easier and more efficient.
- The register should have the ability to capture this information rather than manually go through council’s separate databases, duplicating the process.
- OLG should identify the purpose / value of the report.
- Remove the obligation to report – it is more meaningful to report on the resident satisfaction level with council management of pets gauged through the annual community survey (reported in the Annual Report).
- Should include data on how many dogs and cats entering council facilities were microchipped if want to measure the success of mandatory microchipping.
- Reduce reporting frequency eg, annually.

**Sources:** Various submissions and questionnaires to IPART, and comments from councils at Dubbo workshop.
The burdens raised by councils in relation to processing companion animals registration fees, and measures to address these burdens, are summarised in Box 11.3 below.

### Box 11.3 Companion animals fees

**Council concerns:**
- Councils’ responsibilities (including pounds) are costly and unable to be fully recovered through fees (fee revenue is about 10% of costs) – this is an example of cost shifting.
- Councils are required to collect registration fees, pay fees to State and then wait for reimbursement, often with extensive delays (OLG two quarters behind). There are also difficulties in reconciling monies from registrations.

**Solutions proposed by councils:**
- Provide greater funding to councils (ie, recognise as a Community Service Obligation (CSO) and increase contribution to councils).
- Allow councils to simply retain a set share of the fees and remit the rest to the State.

**Sources:** Various submissions and questionnaires to IPART, and comments from councils at Wagga Wagga workshop.

### 11.1.2 Background

**The Register and registration process**

In March 2015, the Premier announced that the current paper-based registration system will be replaced with an easy, one-step online registration system. According to the Premier, having “an online registration system that links animals to breeders at the time of micro-chipping will centralise these details, and assist animal welfare authorities to crack down on illegal animal breeding practices, such as puppy farms”. The Premier also noted that it is hoped that the new system will make it “easier for families to transfer registration at the time of purchase, update contact details and search for lost pets.”

As discussed above, the NSW Government has already committed to undertake a comprehensive review and redesign of the register and registration system.

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In 2013, IPART recommended in our *Local Government Compliance & Enforcement - Draft Report*\(^{247}\) that OLG:

- Institute an optional one-step registration process where the owner could microchip and register the pet at the same time and the person completing the microchipping would act as a registration agent.\(^{248}\)
- Develop online companion animals registration including provision to change details of registration online.\(^{249}\)
- Amend the registration form so an owner’s date of birth, as well as other unique identifiers such as drivers licence number or Medicare number, are mandatorily captured information so penalty notices can be enforced.\(^{250}\)

Once pet owners are able to change their details online, there may be value in providing this facility through the central Service NSW portal. The community is now highly familiar with the services offered through Service NSW in relation to most common licences held by individuals, such as car registration, drivers licence, boat licence, recreational fishing licence, etc.\(^{251}\) However, providing this facility would need to be subject to the cost of using Service NSW and the ability to interface with the new Register.

Councils also raised in our consultation processes burdens in relation to the current two-step registration process. Given the NSW Government’s commitment to institute a new online one-step register and registration process, we have not needed to address these burdens. Instead we have made recommendations to ensure the new register and registration process minimises unnecessary burdens on councils. The new register also offers opportunities to further reduce current reporting burdens, as discussed below.

\(^{248}\) Ibid, Draft Recommendation 32, p 272.
\(^{249}\) Ibid, Draft Recommendation 33, p 273.
\(^{250}\) Ibid, Draft Recommendation 35, p 278.
\(^{251}\) For a full list of licences and other services that can be undertaken through Service NSW, see [http://www.service.nsw.gov.au/](http://www.service.nsw.gov.au/), accessed on 7 December 2015.
Pound reporting (cat and dog survey)

Some councils employ staff to operate their pounds, others use third parties to run their pounds or provide impounding services. Councils may be required by OLG to report on activities relating to seizing and holding animals in pounds operated by the council or the council’s agent. According to OLG, councils use different ways of collecting data about animals in pounds – some use a book, others use software systems such as ‘Shelter Mate’.

Presently, councils have to manually enter relevant data into a one page spreadsheet in the Register. Under OLG’s Guidelines all pound data must be entered in the reporting tool in the Register by no later than 31 August each year. Councils are also encouraged to enter pound information on the online reporting tool on a monthly basis.

OLG’s Guidelines recommend that the reporting of pound data be made an explicit delivery item in any service agreement councils enter into with a third party pound operator.

Each year OLG produces a detailed analysis of council data collected on the seizures of cats and dogs. However, this data is not reported in a timely fashion: for example, data collected for the 2011-12 period was reported in June 2013.

According to OLG, pound data collected by councils provides transparency around animal euthanasia rates and is of high interest to animal welfare groups in the community. Under OLG’s Guidelines, the purpose of reporting pound data is primarily to help councils with their animal management activities, ie, management decisions, planning, budgeting, reporting and allocating council resources. The data also provides “the NSW Government and the community with a quantitative measure to determine the ongoing impact of the Act – and, specifically, compulsory microchipping”.

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253 CA Act, s 67A.
254 Councils that establish pounds are required to keep a pound register of all animals in their care: Impounding Act 1993, s 30. Information provided to IPART from OLG, 23 October 2015.
255 Email to IPART from OLG, 4 November 2015.
257 Ibid.
259 Ibid.
260 Information provided to IPART from OLG, 23 October 2015.
OLG presently collects information about why an animal is in the pound or why it was euthanised (eg, abandoned, stray, surrendered, sold, not suitable for rehoming, etc), but not whether the animal is microchipped or not.262 There could be value in OLG collecting data on whether an animal entering, leaving or being euthanised in a pound is microchipped or not, as part of implementing our recommended automated pound reporting system.

The NSW Government supported the Companion Animals Taskforce recommendation to update the Register to provide a centralised impounded animal management tool for use by all councils, relevant State agencies and animal welfare organisations.263

Automation of the entry of pound data into the Register (ie, uploading of data directly from pound systems into the central register) would be more efficient than the current system. Automation would be possible if council software systems were standardised and/or upgraded to interface with the Register. This could be part of the current redesign of the Register and may require additional funding. This would enable OLG to report the data in a more timely fashion and increase the utility of the data. It would also be consistent with the NSW Government’s support for a centralised impounded animal management tool.

Given the high level of interest in the community in companion animals management, we consider there would be value in OLG making companion animals data available through the new NSW Government Open Data portal at www.data.nsw.gov.au.

**Dog attack reporting**

Burdens were also raised in relation to reporting dog attacks in the Register. The main burden relates to the mandatory 72-hour timeframe for reporting incidents. Because we consider the new online Register would considerably reduce this reporting burden, we have not made a recommendation in relation to dog attack reporting. We discuss this issue further in Appendix B, Table B.7.

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262 Email to IPART from OLG, 4 November 2015.
Councils’ community order functions include matters related to gambling, gaming, graffiti, liquor, clubs, security, trees and neighbours. These functions are important for maintaining order in local communities.

This chapter examines regulatory burdens identified by councils regarding the establishment of alcohol free zones and the enforcement of graffiti control.

Some councils consider that current arrangements for establishing alcohol free zones (AFZ) are onerous, particularly in relation to the four-year time limit. They considered these processes should be streamlined or simplified to be made consistent with those applying to alcohol prohibited areas (APA). As well, they considered the consultation process for special events could be made more efficient.

Our draft recommendation to review how councils currently apply the AFZ and APA provisions including for special events, is aimed at identifying those aspects of the regime that could be streamlined and simplified.

Additionally, current arrangements for graffiti control are also considered inefficient as councils’ narrow powers under the Graffiti Control Act 2008 make enforcement difficult. In this area, we have recommended devolving regulatory authority and responsibility to councils by providing them powers to prosecute commercial entities or individuals that commission bill posting.

These draft recommendations aim to improve councils’ ability to undertake their community order functions more effectively and efficiently.

Other burdens raised by councils on which we are not proposing to make recommendations are discussed in Appendix B, Table B.9. Some matters raised were deemed out of scope. These are listed in Appendix C.
12.1 Alcohol free zones and alcohol free areas

Councils may propose alcohol free zones (AFZ) in a public road or carpark for a period not exceeding four years under section 644B of the LG Act. Under section 632A of the LG Act, they may propose alcohol prohibited areas (APA) in any public place except those dealt with under AFZ provisions. APAs are not time limited.

The LG Act prescribes consultation (including with the public, police, adjoining liquor licensees), notification and signage requirements for adopting both AFZs and APAs. For AFZs, signage must specify the expiry period.

AFZs may also be declared for special events (albeit ‘special events’ are not defined in the LG Act). The consultation and notification requirements are the same for special events as for other AFZ declarations. The signage must specify the period, ie, the day or days for which the AFZ is to operate.

Some councils indicated that the requirement to re-establish AFZs every four years is excessive due to the onerous consultation process and cost of new signage at expiry dates. They also submitted that the provisions applying to both APAs and AFZs should be consistent. Additionally, City of Sydney Council submitted that AFZ and APA processes are not suitable for temporary and events-based alcohol restrictions.264

There appears to be a level of misunderstanding about the objectives and operation for each regime. We have therefore recommended a review of how councils are currently applying AFZs and APAs which would assess whether the original policy objectives for AFZs and APAs are being met, or whether consolidation of the legislation is warranted. Additionally the review should identify whether these regimes are suitable for temporary and events based alcohol restrictions.

Based on the outcome of the review, the rationale and process for each regime should be clarified in the LG Act and the Guidelines to address stakeholder concerns.

Draft Recommendations

47 That the NSW Government review how councils are currently applying Alcohol Free Zone (AFZ) and Alcohol Prohibited Area (APA) provisions in response to alcohol related anti-social behaviour and clarify the rationale and processes for declaring AFZs and APAs in the Local Government Act 1993 and Ministerial Guidelines on Alcohol-Free Zones.

48 That the NSW Government provide an efficient process for consultation and decision making on temporary and events-based alcohol restrictions.

264 City of Sydney Council, Questionnaire response, August 2015.
12.1.1 Stakeholder comments

In response to our review, stakeholders identified that:\(^{265}\)

- The requirement to re-establish AFZs every four years is excessive as the consultation process and installation of signage for each application is onerous.
- There are inconsistencies between AFZs and APAs in relation to signage and period of activation.
- AFZ and APA processes are not suitable for temporary and events-based alcohol restrictions.

Stakeholders have proposed various actions to address these concerns including that:\(^{266}\)

- Councils should be allowed to establish permanent AFZs.
- Provisions applying to AFZs and APAs should be consistent.
- Signage should not have expiry dates. That would avoid some costs of new signage.
- A more efficient process should be established for temporary or events-based restrictions: for example, online consultation and delegation to the CEO rather than council resolution.

12.1.2 Background

When first introduced, AFZs were intended to be declared in discrete locations in response to identified trouble spots. They were not designed to result in total prohibition on the public consumption of alcohol.\(^{267}\) Under the Ministerial Guidelines, the proposal to establish an AFZ must be supported by evidence that the public’s use of the road, footpath or carpark has been compromised by street drinkers.\(^{268}\)

AFZs are essentially a short-term control measure intended as early intervention to prevent escalation of irresponsible street drinking to incidents involving serious crime.\(^{269}\) The expectation is that the desired objectives can be achieved within the operational period.

\(^{265}\) IPWEA and Nambucca Shire Council submissions to IPART Issues Paper, August 2015; and Campbelltown City Council, Sutherland Shire Council, City of Sydney Council and Lismore City Council Questionnaire responses, August 2015.

\(^{266}\) Ibid.

\(^{267}\) McNamara, L and Quilter, J, Public Intoxication in NSW: The Contours of Criminalisation, 2015, p 17.


\(^{269}\) OLG (previously DLG), Circular to Councils no. 09-05, Alcohol Free Zones – Update of Ministerial Guidelines, February 2009.
Originally, AFZs were time limited to 12 months. This was extended to three years, and later in 2008, to four years to align with councils’ election cycle and to cut red tape.\(^{270}\)

The Ministerial Guidelines set out evaluation criteria for councils when considering re-establishing an AFZ which include:\(^{271}\)

- the original reasons for the zoning
- the success in achieving a reduction in unacceptable street drinking
- police statistics regarding the value of re-establishing the AFZ
- other measures that need to be considered (eg, community education) if unacceptable street drinking is still a problem, and
- whether community perceptions of safety has improved.

Under the LG Act, the NSW Police Force plays an influential role in the identification of streets that it considers should be declared AFZs and in providing evidence to support the proposal.\(^{272}\)

With respect to APAs, under section 632A of the LG Act, councils can declare any public place (or part of a public place)\(^{273}\) an APA permanently without duration limit. APAs are widely used in recreational areas, such as parks and beaches and may apply at all times or only for specific days, times or events.

### 12.2 Graffiti control – enforcement

Under the *Graffiti Control Act 2008*, councils can currently only prosecute individuals who affix bill posters. They cannot prosecute individuals or organisations that commission or produce the posters.

City of Sydney Council considers the current arrangements are inefficient and makes enforcement difficult as it allows the organisation or individual commissioning the bill posters to continue these practices. It also leads to councils funding the cost of the removal of bill posters from the public domain.\(^{274}\)

We have recommended that the *Graffiti Control Act 2008* be amended to enable prosecution of commercial entities or individuals that commission bill posting. This would shift the legal responsibility of the act of bill posting from the bill poster to the entity that gains financial benefit from the posting. Further, devolving regulatory authority and enforcement powers to councils enables more efficient and effective enforcement in relation to graffiti control.


\(^{273}\) Except for a public place that is part of a public road or car park which are covered by AFZs instead.

\(^{274}\) City of Sydney Council, Questionnaire response, August 2015.
Draft Recommendation

49 That the Graffiti Control Act 2008 be amended to allow councils to prosecute individuals and organisations that commission or produce bill posters that are visible from a public place within their local government area.

12.2.1 Stakeholder comments

City of Sydney Council indicated that the control of graffiti and bill posting is made difficult under current arrangements where only the individual affixing bill posters can be prosecuted under the Graffiti Control Act 2008. There are no provisions under current legislative arrangements to penalise organisations or companies commissioning the bill posters, who face little disincentive to continue in these practices.275

The Department of Justice has advised that it is finalising a review of bill posting provisions in the Graffiti Control Act 2008. The legislation was to be reviewed with particular regard to:276

- shifting the legal responsibility of the act of bill posting from the bill poster to the commercial entity/individual that gains financial benefit from the posting
- increasing the penalty amount for the commercial entity/individual benefitting from the activity, and
- enabling councils to issue penalty notices to identified commercial entities/individuals absent criminal prosecution under the Act.

To date, the Department of Justice’s consultation process has included:

- A web-based public survey and feedback process in late 2014 to early 2015 which asked respondents to consider the three key elements of the review identified above.
- A targeted consultation process with key stakeholders. Its local government interviews included councillors, heads of City Operations, Waste Management Services, City Ranger patrols, Cultural and Music offices and Development Approval sections.

This review is currently in progress.

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275 City of Sydney Council, Questionnaire response, August 2015.
276 Information provided to IPART by the Department of Justice, 11 December 2015.
Appendices
Community order

IPART Review of reporting and compliance burdens on Local Government
A Terms of Reference

Dr Peter Boxall AO  
Chairman  
Independent Pricing and Regulatory Tribunal  
PO Box K38  
HAYMARKET POST SHOP NSW 1240

Dear Dr Boxall

Pursuant to section 2 of the Independent Pricing and Regulatory Tribunal Act 1992, I am referring the following matter to the Tribunal for investigation and report: Review of regulatory reporting and compliance burdens on local government.

As part of the NSW Government’s response to the Independent Local Government Review Panel, the government has agreed to commission a review identifying opportunities to streamline the regulatory, compliance and reporting requirements on councils to improve outcomes for communities.

The Tribunal is requested to submit a formal review report to the Minister for Local Government within 12 months of signing of the Terms of Reference.

Yours sincerely,

MIKE BAIRD
Premier

Encl.

cc Minister for Local Government
General

IPART is to undertake a review to identify burdens placed on Local Government in the form of planning, reporting and compliance obligations to the State Government as imposed by policy and legislation, and to make recommendations for how identified unnecessary or excessive burdens can be reduced. These recommendations should aim to improve the efficiency of local government in NSW and enhance the ability of councils to focus on delivering services to their communities.

In investigating and making recommendations on this topic, the review is to:

a) identify any inefficient or unnecessary planning, reporting, compliance or regulatory burdens placed upon local government by NSW State Government legislation, policy or through other means;

b) develop options to improve the efficiency of local government by reducing or streamlining planning, reporting and compliance burdens, including:

- identifying and making recommendations to reduce any duplications in reporting requirements across State Government, including the estimated saving from making these changes; and
- reviewing the necessity of reporting obligations on councils as an essential requirement of implementing State Government policies.

In undertaking the review consistent with the above terms, the following are to be taken account of:

- the rationale for State Government planning, reporting and compliance requirements;
- developments in other jurisdictions including relevant reviews;
- best practice regulatory principles, including those developed by other highly regarded bodies undertaking relevant reviews and inquiries;
- support that could be provided by the State Government to help manage planning, reporting and compliance requirements upon local government; and
- any identified risks to the NSW Government and the NSW community from reducing the regulatory and reporting requirements on local government.

It is the intention of this review to focus on the compliance and reporting burden placed on local government by State Government legislation and function. Matters considered by IPART in its 2014 Report of Local Government Compliance and Enforcement are related to burdens placed on businesses and the community and are outside the scope of this review.
Evidence

The review will collect evidence to establish the impacts on councils related to reporting and compliance burdens on councils, and to substantiate recommendations for reform.

Consultation

The review should consult with relevant stakeholders and NSW Government agencies by releasing an Issues Paper for the review. It may also hold public hearings. Consultation should also occur with the Fit for the Future Ministerial Advisory Group.

Governance

Briefing on progress should be provided at regular intervals, or as requested, to the Chief Executive, Office of Local Government.

The final report should be provided formally to the Minister for Local Government who shall decide on the timing of release.

Timeframe

A final review report should be formally submitted within 12 months of signing of the Terms of Reference.

Background

The Independent Local Government Review Panel (Panel) made a number of recommendations regarding general reform of the local government system in NSW.

As part of its response to the Panel, the NSW Government has agreed to commission IPART to conduct a review identifying opportunities to streamline the regulatory, compliance, and reporting requirements on councils to improve outcomes for communities.

The Government also committed to introduce a new Local Government Act from 2016/17.
B Other identified burdens

Table B.1 Systemic issues

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<tr>
<th>1. Special variation process and rate pegging</th>
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<tr>
<td>The rate peg determines the maximum percentage amount by which a council may increase its general income for the year. Under the <em>Local Government Act 1993</em>, councils can apply to IPART for a special variation to increase general income by more than the rate peg. Applications are assessed against criteria set out in guidelines issued annually by the Office of Local Government.</td>
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Stakeholders’ description of burden and proposed solutions

- Submissions considered rate pegging a regulatory burden for councils as it restricts council rate revenue and has reduced financial flexibility and the ability of councils to deliver services to their communities. It has exacerbated the impact of cost shifting when responsibilities are transferred to local government from other levels of government.
- Councils also considered the special variation application process onerous.

IPART analysis

- The Independent Local Government Review Panel (ILGRP) recommended a streamlined process for special variation increases of up to 5% above the rate peg over the life of a Delivery Program, i.e. 4 years.
- In its response to the ILGRP’s report, the NSW Government committed:
  - to removing unwarranted complexity, costs and constraints from the rate peg system, where there is evidence the council has taken steps to reduce unnecessary costs before seeking to impose increased burden on ratepayers, and
  - OLG to work with IPART to amend the guidelines to develop a streamlined and more proportionate process for ‘fit for the future’ councils wanting to increase rates above the rate peg.

Conclusion

The NSW Government has committed to a streamlined process for rate increases above the rate peg.
Table B.2  Local Government Administration

1. Integrated Planning and Reporting half-yearly reports
The Local Government Act 1993 sets out two requirements to report progress against a council’s delivery program:
- the general manager must provide councillors with regular reports, at least every six months, of progress on principal activities detailed in the delivery program, and
- in the Annual Report the council must report to the community how it has implemented the delivery program (and operational plan) in that year (ss 404(5) and 428).

Stakeholders’ description of burden and proposed solutions
Some councils consider this to be a duplication and propose dropping the half-yearly reports and reporting only in the Annual Report.

IPART analysis
- Although the reporting obligations are imposed by the State Government, neither involves reporting to the State Government.
- The reporting obligations have different audiences, and serve different purposes.
- Regular reports to the councillors should ensure that changing circumstances or any impediments to achieving the objectives in the delivery program would be identified in a timely way, and ensure that appropriate remedial action can be taken. This would not be possible if the progress were only reported in the Annual Report.

Conclusion
The two reporting obligations are not an unnecessary burden as they serve useful, and different purposes.

2. Assets reporting
Councils are required by the Local Government Code of Accounting Practice and Financial Reporting (the Code) to report the value of assets in accordance with the Australian Accounting Standards Board’s Accounting Standards and OLG’s guidelines.

Stakeholders’ description of burden and proposed solutions
- The calculation of asset values, “estimated cost to bring to satisfactory condition” and “required annual maintenance” to satisfy reporting requirements for Infrastructure Assets are too complex and excessive.
- Councils are required to complete several similar annual reports relating to Asset Management.
- The scale and the level and complexity of asset reporting is onerous.
- Councils need more guidance on asset related reporting in Special Schedule 7.
- OLG should provide further guidance and require consistent application of valuation methods between councils.

Some solutions provided by stakeholders include:
- Where duplicative asset reporting exists, asset information should be integrated into a single report.
- Infrastructure renewal backlogs should be measured only by the assets overdue for renewal (ie, poor condition rating). An example is the “overdue for renewal” definition rather than “cost to bring to satisfactory condition”.
- The treatment of assets in the Local Government Code of Accounting Practice and Financial Reporting should be in line with the IPWEA assets management guidance.
B Other identified burdens

IPART analysis
There are OLG-led reforms occurring in this area:
- Councils were required to have asset management systems prepared for independent audit in 2014-15.
- Councils are required to have Special Schedule 7 independently audited from 2015-16 onwards.
- OLG is currently working in consultation with the Local Government Professionals Australia (NSW), Local Government Auditors Association, NSW Audit Office and Institute of Public Works Engineering Australasia to develop a more accurate and consistent calculation methodology for infrastructure backlogs. This work is also addressing the issue of defining “overdue for renewal” in backlog measurement.

Conclusion
- The Office of Local Government is continuing current reforms in the area of asset and infrastructure backlog measurement, with a focus on accurate, consistently applied and effective reporting, including:
  - Asset management processes
  - Asset measurement, recognition and accounting practice, and
  - Measurement of infrastructure backlogs.
- The reforms would improve councils’ knowledge and practice in the area of asset reporting.

3. Quarterly Budget Review Statement (QBRS)
The QBRS is produced for councillors every quarter and shows a revised budget against the original budget adopted at the beginning of the year.

Stakeholders’ description of burden and proposed solutions
- Some councils have stated the QBRS report is:
  - too prescriptive
  - too complex
  - inappropriate for councillors, and
  - onerous as many councils do not have the skills to produce the QBRS report.
- Some stakeholders considered the QBRS needs flexibility and minimum standards – many councillors think ‘budget by exception’ is not sufficient, and so councils over report.

IPART analysis
- Stakeholder comments suggest councils may not be aware of the wide flexibility already available in QBRS reporting.

Conclusion
Stakeholder consultation suggests that many councils may need to improve their practice and knowledge of the Quarterly Budget Review Statement requirements, which are included in the Integrated Planning and Reporting Manual for Local Government in NSW.

4. Capital expenditure review
Councils must report to OLG if capital projects have a value higher than the greater of $1m or 10% of annual ordinary rate revenue, and subsequently if the project has a project variance greater than 10%, and consult with the community and report to the elected Council regarding the project.

Stakeholders’ description of burden and proposed solutions
- Large council projects are unnecessarily delayed because of the requirements to report to OLG and consult with the community and the elected Council.
### IPART analysis

- Some councils may require oversight before undertaking relatively large projects. The differing impact of a project on a council is recognised by the requirement to report if capital project value is over 10% of the average ordinary rate revenue.

### Conclusion

- If the Office of Local Government removes or relaxes capital expenditure requirements imposed on councils it should use a risk-based framework to determine if and when a council should undertake capital reviews.

### 5. Councillors’ expenses, council contracts and other reporting

Councils are required to:

- place councillor expenditure policies on public exhibition, even when these are unchanged from the previous term
- report on contractual conditions of senior staff to councillors, and
- place this information in the council’s Annual Report.

#### Stakeholders’ description of burden and proposed solutions

When this information is required to be reported in the Annual Report under regulation 217 of Local Government Regulation 2005 (the Regulations) it is duplicated by:

- section 253(5) of the LG Act, which requires councils to give public notice of adopting a policy of councillor expenses or provision of facilities, when the policy is unchanged from last council term, and
- section 339 of the LG Act, which requires the general manager to report annually to the elected Council on the contractual conditions of senior staff.

#### IPART analysis

We have reviewed the requirements of the LG Act and the Regulations and consider the Annual Report to be a report primarily for the community and the requirements under the LG Act to be for the benefit of the elected Council. We consider that the current requirements strike a balance between the burden on councils and the need for the community and the elected Council to be informed.

#### Conclusion

That current obligations under section 253(5) and section 339 of the LG Act, which cover public exhibition of expenses and facilities policies when there is no change from the previous year, and requirements under regulation 217 of the Regulations to report this information in the annual report, do not represent an onerous burden for councils and meet the information needs of the community and the elected Council.

### 6. Complaint handling and code of conduct

Councils are required to engage external ‘conduct reviewers’ to review code of conduct complaints.

#### Stakeholders’ description of burden and proposed solutions

- Engaging external ‘conduct reviewers’ is costly for councils.
- The Code of Conduct is too long, complex and prescriptive.
- A review of conduct for a Councillor can take over 100 days to complete due to the required 28 day timeframe at various steps. This creates excessive delay.

Solutions suggested by stakeholders included:

- Eliminating the use of conduct reviewers.
- Reducing the 28 day period by half to allow matters to be dealt with in a more timely manner.
**IPART analysis**

OLG is currently reviewing the Code of Conduct.

**Conclusion**

- As part of its review of the Code of Conduct, we consider OLG should address the issues of:
  - size and complexity of the Code of Conduct, and
  - shortening the time taken for a review of conduct.

**Source:** Various submissions and questionnaires to IPART, and comments from councils at Coffs Harbour, Wagga Wagga, Dubbo and Sydney workshops.
Table B.3  Water and Sewerage

1. Integrated Water Cycle Management (IWCM) Strategy

Under the Best Practice Management of Water Supply and Sewerage Framework, Local Water Utilities (LWUs) are required to prepare and implement a sound 30-year IWCM Strategy, which includes a Total Asset Management Plan and Financial Plan. An IWCM is prepared every eight years. Department of Primary Industries Water (DPI Water) concurrence is required for the IWCM Strategy.

An IWCM Strategy is intended to:
- ‘right size’ a LWU’s projects and identify the best-value 30-year IWCM scenario and Strategy on a triple bottom line basis
- identify typical residential bills that would meet the cost for the levels of service negotiated with the community for the next four years in current dollars, and
- update the existing 30-years renewals plan.

Stakeholders’ description of burden and proposed solutions
- Stakeholders identified that LWU requirements relating to preparation of an IWCM Strategy are excessive and costly. Specifically, they argued:
  - LWUs engage consultants to prepare IWCM Strategies and the cost of this exercise is excessive
  - LWUs are required to model and test too any scenarios, and
  - the definitions and standards related to ‘secure water yield’ are excessive and unrealistic and add to the overall cost of the Strategy.
- Stakeholders considered that the requirements relating to the IWCM Strategy should be more flexible so that LWUs can tailor their strategy to reflect the scale and risk of their operations.
- Some stakeholders suggested that IWCM strategies should be removed altogether, particularly for councils without growth.
- Participants at our Coffs Harbour workshop considered that some of the burden associated with preparation of an IWCM Strategy could be alleviated if DPI Water provided consultants or its own expertise to help LWUs prepare their Strategy.

IPART analysis
- IWCM Strategies must be prepared in accordance with a checklist that was released in 2014. Feedback from stakeholders suggests that this checklist is more comprehensive than the previous requirements. DPI Water advises that it has tried, in the current IWCM Strategy checklist, to address all potential outcomes/ steps involved in preparation of an IWCM Strategy.
- DPI Water advises that it provides ongoing guidance to LWUs and their consultants on preparation of an IWCM Strategy. On request, it also provides input to the scoping document and brief for consultant engagement to ensure LWUs get a fit for purpose strategy.
- DPI Water considers that secure water yield definitions are important to achieve consistent modelling across the State. This is important because the State needs an understanding of which communities are vulnerable in order to identify where State funding may be required.
- The IWCM Strategy requires a LWU to consider all scenarios to ensure it is not under or over-investing. DPI Water advises that some scenarios may be easy to dismiss without extensive testing. It expects LWUs to undertake scenario testing in a flexible and tailored manner. DPI Water has identified that it could provide additional guidance to LWUs on how to achieve this flexibility.
- DPI Water considers that the IWCM already provides flexibility for a LWU and its community to opt for a higher or lower level of water security, subject to the LWU clearly demonstrating that the community understands the consequences (such as water restrictions and impact on customer bills).
Other identified burdens

The greatest cost to a LWU is in preparing its first IWCM Strategy under the current checklist. Future updates should build on the existing strategy and be far less costly. For LWUs without growth, future updating would simply focus on updating the Total Asset Management Plan, preparing a sound renewals plan and updating the financial plan.

Conclusion

- DPI Water’s suggestion to provide additional guidance to LWUs on flexible scenario testing may address stakeholder comments about tailoring an IWCM to reflect the scale and risk of a LWU’s operations.
- We note that recommendation 10 to undertake central water planning, addresses stakeholder comments about the excessive nature of IWCM requirements and the cost of preparing an IWCM Strategy.

2. DPI Water review and approval of various plans and strategies
Local Water Utilities (LWUs) are required to act on feedback from DPI Water on various plans and strategies under the Best Practice Management of Water Supply and Sewerage Framework and under section 60 of the Local Government Act 1993.

Stakeholders’ description of burden and proposed solutions

- Stakeholders noted delays in LWUs receiving feedback and approvals from DPI Water that in turn, delay the LWUs’ projects.
- Various solutions for this issue were proposed, including:
  - adequately resourcing DPI Water to provide timely review and approval of plans,
  - development of a peer review system, in lieu of DPI Water review of LWU plans
  - development of templates for LWU plans, based on the plans of LWUs with proven performance
  - removing approvals in some areas altogether.

IPART analysis

- DPI Water has acknowledged that an organisation restructure has affected the timeliness of feedback and approvals it has been able to provide.
- DPI Water advises that it has recently streamlined its system for reviewing LWU plans and is implementing an online tracking system which will allow each LWU to view the status of its plans online.

Conclusion

- DPI Water’s proposed online tracking system for LWUs should provide greater transparency around DPI Water’s performance in reviewing and approving plans.
- Adoption of service targets by DPI Water for its input to LWU plans and approvals would provide greater certainty to LWUs and help in their project planning.

3. Section 60 (Local Government Act) approvals – inefficient processes
LWUs are required to obtain approval from the Minister for Primary Industries (through DPI Water) under section 60 of the Local Government Act 1993 for new or extended water or water treatment works. They also need an Environmental Protection Licence (EPL) from the Environment Protection Authority (EPA) for works that involve environmental discharges. Some, but not all of these works also require planning approval under the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP).

Stakeholders’ description of burden and proposed solutions

- Stakeholders identified what they perceive as an overlap in some approvals obtained through DPI Water under section 60 of the Local Government Act 1993 and EPLs issued by the EPA for the same infrastructure. They also commented on confusion about the responsibilities of these agencies, receiving conflicting advice and the precedence of agency advice or requirements.
Some stakeholders commented that DPI Water’s processes for section 60 approvals are excessive, that its assessment causes delay and adds little value. 

**IPART analysis**

- DPI Water considers that there are no overlaps or inconsistencies in the responsibilities of the EPA and DPI Water’s section 60 approvals. In the case of water treatment and sewage works, DPI Water advises that LWUs should consult the EPA first on the outcome that the infrastructure must achieve. DPI Water’s approval process is then intended to provide assurance to the LWU and the community that the infrastructure is fit for purpose (ie, for protecting public health and safety and the environment and that it provides a robust cost-effective solution which avoids ‘gold-plating’). DPI Water’s section 60 approval process is clearly documented and published on its website.

- The EPA notes that its role for new or significantly upgraded systems is via the planning system. Any EPA licence requirements must be consistent with the planning approval. The EPA suggests that integrating DPI Water’s process with the planning process could provide efficiencies.

- The EPA’s suggestion of integrating DPI Water’s section 60 approvals with the planning process could streamline the various approvals LWU’s require in this area. However we note that the ISEPP may not provide a complete solution because not all section 60 approvals also require planning approval. Any future review of the ISEPP should consider incorporating section 60 approvals under the **Local Government Act 1993**.

- In the meantime, DPI Water could help to resolve the confusion and inefficiencies described by stakeholders by updating its guidance material to explain the current processes to LWUs more clearly and streamline its own processes.

**Conclusion**

- DPI Water could update its guidance material for LWUs to explain:
  - the process and sequence for engaging with DPI Water and the EPA about licensing and approval of new water and sewage works
  - the responsibilities of each regulator, and
  - how section 60 approvals align with planning processes.

- We note that recommendation 11 to enable LWUs with sufficient capacity to be regulated under the **Water Industry Competition Act 2006** as an alternative to their current regulation under the BPM Framework and section 60 addresses stakeholder comments about the overall benefit of current processes.

**4. Certificates of compliance for development under the Water Management Act 2000**

The legislative provisions relating to LWU providing services to new developments are complex. Section 64 of the **Local Government Act 1993** (LG Act) prescribes that sections 305 to 307 of the **Water Management Act 2000** (WM Act) apply to LWUs. Sections 305 to 307 give LWUs the power to grant certificates of compliance for development carried out, or proposed to be carried out, within their supply areas. As a precondition of granting a certificate of compliance, LWUs can either levy a contribution (developer charge) towards, or require the construction of, the water management works required to service the development. If the construction of works is required, a developer may be required to obtain approval from the LWU under section 68 of the LG Act before carrying out the works. This must occur before a compliance certificate can be issued for the development. Section 109J(e) of the **Environmental Planning and Assessment Act 1979** requires a compliance certificate to be issued by the LWU before a subdivision certificate can be issued.

**Stakeholders’ description of burden and proposed solutions**

- Stakeholders argue that these provisions of the WM Act are unclear and this creates difficulties for LWUs in complying with them.

**IPART analysis**

- DPI Water advises that it is currently developing a strategy for streamlining LWU legislative requirements, including sections 305 to 307 of the WM Act.
## Conclusion

DPI Water streamlining LWUs legislative requirements, including sections 305 to 307 of the WM Act should address stakeholder comments in this area.

### 5. Guidelines for Development Servicing Plans

To comply with the Best Practice Management of Water Supply and Sewerage Framework, LWUs must prepare a Development Servicing Plan (DSP) in accordance with the Developer Charges Guidelines for Water Supply, Sewerage and Stormwater (issued by DPI Water) and levy developer charges in accordance with the DSP.

### Stakeholders’ description of burden and proposed solutions

- The current Development Servicing Guidelines were released in 2002. DPI Water released updated draft guidelines for comment in 2012 but they have not been formally implemented creating uncertainty for councils and developers.

### IPART analysis

- DPI Water has acknowledged that the 2012 Draft Guidelines need to be finalised and noted that in the meantime, the current 2002 Guidelines apply.

### Conclusion

DPI Water finalisation of the Draft Development Servicing Guidelines should address stakeholder comments in this area.

### 6. Dam safety inspections

“Prescribed” dams, ie, dams formally identified as potentially posing a significant public safety risk, are regulated by the Dam Safety Committee under the Dams Safety Act 1978. Many LWUs are owners of prescribed dams. DPI Water also has regulatory responsibilities for LWU dams.

### Stakeholders’ description of burden and proposed solutions

- Stakeholders commented that LWUs have received conflicting advice about dam safety inspections from the Dam Safety Committee and DPI Water. They consider there is duplication in the work of these two regulators that should be removed.

### IPART analysis

- The Dam Safety Act 2015 was assented to on 28 September 2015 but has not yet commenced. This new legislation renames the former Dam Safety Committee as Dams Safety NSW. It also amends the Local Government Act 1993 (LG Act) to remove the role of the Minister for Primary Industries in relation to most dam safety matters, including the requirement for DPI Water inspections pursuant to section 61 of the LG Act.

### Conclusion

Recent (but as yet uncommenced) changes to the regulatory arrangements for dam safety, including removing the requirement for DPI Water to conduct inspections of dams, should address the concerns expressed by councils about duplication in the work of DPI Water and the Dam Safety Committee.
7. Approval to trade water allocations

Assignment of water allocations between water access licences requires Ministerial approval under the Water Management Act 2000. LWUs wanting to temporarily trade excess water require separate approval from the Minister for Primary Industries under the Access Licence Dealing Principles Order 2004 so the Minister can be satisfied that the trade will not put the water supply for NSW towns supplied by a LWU at risk.

Stakeholders’ description of burden

- Stakeholders have identified a burden in that LWUs are required to obtain separate Ministerial approval to trade excess water allocations. They suggest that if an LWU’s Integrated Water Cycle Management (IWCM) Strategy has been approved, the Minister should have confidence in the LWU’s planning and water security and not require separate approval to trade excess water.

IPART analysis

- DPI Water advises that it would consider streamlining or improving the approval process for LWUs to trade excess water as part of a review of the Access Licence Dealing Principles Order 2004.
- We note that other regulatory arrangements for LWUs, such as the comprehensive requirements for preparation of an LWU’s IWCM Strategy, have changed significantly since the approval process for trading excess water was imposed. We support a review of this approvals process in light of other relevant current regulatory arrangements.

Conclusion

DPI Water’s review and streamlining of the process for Local Water Utilities to obtain approval to trade water allocations under the Water Management Act 2000 and the Access Licence Dealing Principles Order 2004 should address stakeholder concerns about unnecessary and duplicative processes.

8. Reporting to NSW Health – fluoridated water supply

LWUs that supply fluoridated water have obligations to keep various records and provide reports to NSW Health under the Fluoridation of Public Water Supplies Act 1957 and New South Wales Code of Practice for Fluoridation of Public Water Supplies.

Stakeholders’ description of burden and proposed solutions

- Stakeholders commented that LWUs report or keep duplicate information in Forms 2 and 4 in relation to their fluoridated water supply. They suggested that the requirement to keep the information in Form 2 should be removed.

IPART analysis

- NSW Health advised that Forms 2 and 4 have different purposes and contain related, but not identical information. Form 4 contains daily recordings of fluoride levels and must be reported to NSW Health monthly. Form 2 contains the data or sample information that lies behind the information reported in Form 4 and does not have to be reported to NSW Health. LWUs are required to maintain Form 2 as a record.

Conclusion

There is no apparent duplication in the reporting requirements of NSW Health in Forms 2 and 4 related to fluoridated water supply.
9. Dual approvals for onsite sewage management systems

Under section 68 of the Local Government Act 1993, councils issue approvals to install and operate onsite sewage management systems (onsite systems) at premises which are not connected to a reticulated sewerage system (ie, in generally unsewered areas). These are typically household septic tanks and aerated wastewater treatment systems installed by the landowner. The approval to operate requires regular renewal and ongoing council inspections, to ensure that a system continues to function properly over its lifetime, whereas an approval to install is not renewed by councils once the system is installed and operating.

**Stakeholders’ description of burden and proposed solutions**

- Some councils identified the administrative burden associated with issuing approvals to operate onsite systems. There is a dual approval system for onsite systems, with households requiring both an approval to install and an approval to operate the system.

**IPART analysis**

- Councils are able to minimise the administrative burden in issuing onsite system approvals by issuing the approval to install and the approval to operate together as a package of approvals. This was noted by some councils at our Coffs Harbour workshop.
- The Draft Report for our previous review identified that Port-Macquarie Hastings Council has adopted this package approach to onsite system approvals, as follows:
  - Port Macquarie-Hastings Council issues a 5-year approval to install and a 5-year approval to operate together as a package. After the expiry of these initial approvals systems are risk-rated to determine how often the approval to operate must be renewed and the system must be inspected.
  - Under clause 34 of the *Local Government (General) Regulation 2005*, a standard condition of approval to install is that the system cannot be operated until the council has given notice in writing that it is satisfied the system has been installed in accordance with the approval. That is, the system owner cannot operate the system under the initial approval to operate until the council provides such notice, without being in breach of their approval to install.
- This approach reduces costs to system owners by reducing processing times and information requirements and reduces the administrative workload for councils.

**Conclusion**

There is scope within the current legislative provisions for councils to minimise administrative burdens associated with dual approvals for onsite systems by issuing an approval to install and an approval to operate together as a package, as described above.

10. New onsite sewage management system approvals when properties are sold

Approvals to operate onsite systems are linked to the property owner. Therefore, when a property is sold, the new owner must apply for a new approval.

**Stakeholders’ description of burden and proposed solutions**

- Stakeholders have identified an administrative burden in issuing new approvals each time a property is sold. They suggest that this burden could be reduced by:
  - linking the approval to operate an onsite system with the property, rather than the property owner, or
  - introducing the ability to transfer an approval to operate an onsite system from the vendor to the purchaser.
IPART analysis

- We do not support linking an approval to operate an onsite system with the property, rather than the property owner. Many purchasers would not have an understanding of the operation of an onsite system, the particular system at the property they have purchased, and/or their responsibilities as an owner of an onsite system. Having the approval to operate linked to the property owner requires a new owner to have contact with their council to obtain the information they will need to operate their onsite system.

- An ability to transfer an approval to operate from a vendor to the purchaser would retain this link with the regulator. However we consider there would be minimal savings in administrative workload (between issuing a new approval to operate compared with transferring an existing approval) to justify any legislative change.

Conclusion

The requirement to issue new approvals to operate onsite sewage management systems when properties are sold ensures that new property owners have contact with council shortly after they purchase such a property. This provides an opportunity for councils to ensure that new property owners have the information they require to operate their onsite system safely and in compliance with the conditions of approval.

Source: Various submissions and questionnaires to IPART, and comments from councils at Coffs Harbour, and Wagga Wagga workshops.
### Table B.4 Planning

#### 1. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP)

The Codes SEPP sets out developments which are either:
- ‘exempt’- not requiring any planning or building approval eg, minor renovations, garden sheds, decks, fences and carports, or
- ‘complying’ - combined planning and construction approval for straightforward developments determined through a fast track assessment by council or private accredited certifiers eg, construction of a new single or two storey house or alterations and additions to a house, change of business or industrial use, alterations and additions to a commercial building and new industrial buildings.


#### Stakeholders’ description of burden and proposed solutions

**Burdens identified by councils:**
- The Codes SEPP is highly convoluted so it is hard to assess and councils spend excessive time explaining it to proponents.
- The definition of complying development is too restrictive.
- It is unclear what constitutes a “minor” subdivision under the Codes SEPP.
- It is unclear why 14 days notification of intention to issue a Complying Development Certificate (CDC) to adjoining and nearby owners is necessary.

**Solutions identified by councils:**
- Simplify and expand the Codes SEPP so it is easier to use and applies more broadly.
- Define or provide guidelines for what constitutes a “minor” subdivision.
- Allow for local variations or flexibility.
- Remove the 14 day neighbour notification period for CDCs.
- The Electronic Housing Code makes it easier to use the Codes SEPP.

#### IPART analysis

- The number of developments in NSW proceeding under the Codes SEPP has steadily increased since its introduction in 2008. In 2014-15, CDCs represented 32% of all development approvals.
- The streamlined process for approving CDCs is a lot quicker and cheaper than lodging a DA and obtaining development consent. Approval for complying development applications takes on average 18 days, compared with 70 for a full DA.
- The NSW Government has committed to revise and simplify the General Housing Code in the Codes SEPP so it is easier to use.
- In addition, DPE has undertaken a range of initiatives to improve the ease of use and scope of the Codes SEPP:
  - ‘Interactive Buildings’ – this online tool helps people work out if their development is ‘exempt’ or not. According to DPE, the site has had 62,000 hits since launched.
  - ‘Electronic Housing Code’ – this online tool enables electronic lodgement of CDCs and is now being used by a majority of councils.
  - DPE Information Line for calls and emails to assist external stakeholders such as councils, applicants and certifiers with the interpretation of the Codes SEPP.
  - Minor amendments to the Codes SEPP currently under consideration that will also refine and improve the application of the policy, including clarifying what constitutes a “minor” subdivision under Division 1, Subdivision 38 of the Exempt Development Code.
  - A discussion paper is on public exhibition until 15 February 2016, exploring options to expand the Codes SEPP to include medium density housing forms, such as dual...
occupancies, manor homes, townhouses and terraces.

**Conclusion**

DPE is currently working on a range of initiatives that are intended to simplify the General Housing Code and result in less time being spent by councils interpreting the policy and explaining it to applicants. Any improvements to the existing Codes SEPP to make it easier to use and broaden its application would decrease regulatory burdens and increase the costs savings to councils and the community. This would have flow-on benefits to the building sector.

### 2. Long Service Levy (LSL)

The Building and Construction Industry Long Service Payments Act 1986 imposes a levy on building and construction work costing $25,000 or more in NSW. The levy must be paid by the proponent of the building work (ie, property owner) before a construction certificate or complying development certificate can be issued. The levy is paid into a fund administered by the Long Service Corporation (The Corporation) and used to make long service payments to building and construction workers. The levy can be paid online, to councils or direct to the Corporation.

**Stakeholders’ description of burden and proposed solutions**

- Why do councils collect and report on LSL? Why is it tied to the planning process?
- Remove council collection of LSL.

**IPART analysis**

- The current levy rate is 0.35% of the value of building and construction work where the cost of building is $25,000 or more (inclusive of GST). For a home costing $200,000 to build the levy is $700.
- Payment of the levy in instalments is possible for large building and construction projects or if payment is unduly onerous.
- Generally, councils collect these fees as part of the building approval process and forward the fees to the Corporation on a monthly basis with a report listing the payments made.
- Currently the Corporation has online payment facilities. However, only full levy payments for building construction work costing between $25k-$6m can be made online. Part payments (ie, by instalment), top-up payments and exemptions cannot be processed online.
- The Corporation has an agreement with councils for councils to act as their agents in collecting this levy. The agreement was reached in 1999. Councils are not compelled to be collection agents and they keep $18 per payment made to cover their administrative costs.
- There does not appear to be any reason for councils to remain collection agents for the levy if they do not wish to be, and this may be something councils can terminate either individually or collectively. Alternatively, if the $18 administration fee is insufficient to cover their administrative costs, they could negotiate the fee with the Corporation. However, $18 per payment appears reasonable.

**Conclusion**

Councils, either individually or collectively through Local Government NSW, should terminate their agency agreement with the Long Service Corporation if the burden of being a collection agent for the Long Service Levy is outweighed by the administrative fee they receive for providing the service. There is already a facility for the levy to be paid directly to the Corporation (including online).
3. Contributions Plans (CPs)

Development contributions are payments by developers to councils that are used to fund community facilities and infrastructure for new development areas. Development contributions for major new developments are calculated based on the cost of infrastructure and facilities included in contributions plans. IPART reviews the content of certain contributions plans on behalf of the Minister for Planning. This review process takes place if:

- development contributions are above the relevant cap, and
- the council is seeking gap funding from a special variation or through the Local Infrastructure Growth Scheme.

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<tr>
<th>Stakeholders’ description of burden and proposed solutions</th>
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<tr>
<td>- Councils are required to prepare a CP based on an Indicative Layout Plan prepared by the State; councils are required to go back to IPART when the cost of works and price of land increases in order to obtain gap funding. This seems inefficient.</td>
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<td>- Remove the cap or at least raise it and index it.</td>
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<td>- Remove the need for IPART approval and scrutiny of CPs.</td>
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<th>IPART analysis</th>
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<tr>
<td>- Under the existing system, IPART’s scrutiny of changes to CPs provides an important check and balance, as the cost of works is not always accurate and this can result in savings to the State.</td>
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<tr>
<td>- The maximum contribution councils can require from developers is capped at $30k (in Greenfield areas). Current State Government policy is to fund the gap between the maximum contribution that councils can charge developers and what it actually costs councils to deliver the infrastructure via the Local Infrastructure Growth Scheme.</td>
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<td>- IPART’s review process ensures that taxpayers only pay the efficient cost of providing essential infrastructure.</td>
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<th>Conclusion</th>
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<tr>
<td>Under the existing development contributions system, IPART’s approval and scrutiny of Contributions Plans of councils is necessary to ensure that efficient contributions are levied on developments and that taxpayers are not unnecessarily paying for contributions above the cap.</td>
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4. Reclassification of public land from “community” to “operational” through the LEP process

All land vested in a council (except roads or crown lands) must be classified under the Local Government Act 1993 (LG Act) as either “community” or “operational”. Community land must be kept for use by the general public. The classification is generally made by a Local Environmental Plan (LEP) but may, in some circumstances, be achieved by council resolution. The major consequence of the classification is that it determines the ease or difficulty with which land may be alienated by sale, leasing or some other means.

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<th>Stakeholders’ description of burden and proposed solutions</th>
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<tr>
<td>- Use of the LEP process for reclassification of public land can be unwieldy, costly and time-consuming.</td>
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<td>- The reclassification process is conducted under both LG Act and planning legislation (LEP process). There should be only one process under one Act (preferably LG Act) – Ministerial involvement via the LEP process is unnecessary.</td>
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<tr>
<td>- Reduce the regulatory requirements in this area or review the processes around reclassification to ensure they are efficient and effective.</td>
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<tr>
<td>- Reconsider the need for the classification of land as community or operational in the LG Act.</td>
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IPART’s analysis

- There is only one process currently – the LG Act requires compliance with the LEP process under the EP&A Act – it does not create a separate process for dealing with reclassification of public land from community to operational.
- The classification of public land is similar to zoning and it is appropriate that it is effected through the LEP process with the same protections (ie, subject to community consultation requirements). Oversight by the Department of Planning & Environment (DPE) through the LEP process appears to be sensible, as the classification is similar to zoning and affects the way that the land can be used.
- In 2014 the Local Government Acts Taskforce considered the classification system and use of the LEP system for classifications or reclassifications. The only changes recommended by the Taskforce in this area were to manage public land as assets through the IP&R framework and to dispense with the need for a separate management plan for community land.
- DPE has recently undertaken significant work to reduce delays in the LEP Gateway process by increasing delegations and streamlining processes (discussed in Chapter 7 - Planning of this report).

Conclusion

The current system of classification and reclassification of public land through the LEP process is appropriate. This system should not be changed unless similar protections, such as public consultation and hearing requirements, are provided under the LG Act.

5. Development Control Plans (DCPs)

A DCP provides detailed planning and design guidelines to support the planning controls in a council’s LEP. In the past, councils had multiple DCPs and applied the plans inflexibly. Recent reforms to the Environmental Planning & Assessment Act 1979 (EP&A Act) clarified the status of DCPs as guidelines only and mandated councils could only have one per area.

Stakeholders’ description of burden and proposed solutions

- Required to send a hardcopy and electronic copy to DPE – the requirement should be removed as councils can only have one DCP per area and it can be accessed via council websites, or only electronic submission should be necessary.

IPART analysis

- As part of the new ePlanning program councils are now required to send electronic copies of their DCPs to DPE for loading onto the NSW Planning Portal (Planning Circular 15-005).
- Centralised information available to the public via the NSW Planning Portal will improve access to information for the public.
- Electronic submission is less time-consuming than submitting hardcopies.
- Unlike LEPs and SEPPs, DCPs are not published centrally on the NSW Legislation website.

Conclusion

From 30 November 2015, copies of Development Control Plans will be required to be submitted electronically through the NSW Planning Portal. It is important for the public to have easy and centralised access to these plans, in the same way they have easy and centralised access to other environmental planning instruments (ie, LEPs and SEPPs).
6. Voluntary Planning Agreements (VPAs)
The EP&A Act provides for Voluntary Planning Agreements (VPAs) between developers and planning authorities (such as councils and the DPE), under which the developer is required to provide a development contribution for a public purpose.

Stakeholders’ description of burden and proposed solutions

- Councils must seek public comment for a period of 28 days even for variations to a VPA that are only minor.
- Remove requirement for public comment if variation is minor and consult with councils to define “minor”.

IPART analysis

- A VPA is an agreement entered into by a planning authority (such as a council or DPE) and a developer. Under the agreement a developer agrees to provide or fund:
  - public amenities and public services
  - affordable housing
  - transport or other infrastructure.
- Contributions can be made through:
  - dedication of land
  - monetary contributions
  - construction of infrastructure
  - provision of materials for public benefit and/or use.
- VPAs cannot be entered into unless public notice has been given and an explanatory note is made available for inspection for at least 28 days. The DPE maintains a VPA Register on its website at http://vparegister.planning.nsw.gov.au/. Councils are also required to maintain a public register of VPAs.
- Councils have some discretion to decide if an amendment is so ‘minor’ that notification is not required.
- It is not a 28-day public comment period, it is simply a requirement to give public notification of the VPA.
- Transparency of VPAs is very important to ensure probity. The public has no input into these agreements.
- The requirement is not unduly onerous.

Conclusion

The requirement to give public notification of Voluntary Planning Agreements and amendments to these agreements does not appear unduly onerous, given the nature of the agreements and limited scope for public input. The requirement should be retained, as it is important to provide transparency to the public on agreements being made between planning authorities and major developers.

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7. Liquor licence applications

Evidence of development approval is required by the Independent Liquor and Gaming Authority (ILGA) for most types of liquor licences before a liquor licence can be granted. Where development consent has already been granted, the applicant is required to provide a copy with the licence application to the Office of Liquor, Gaming & Racing (OLGR). Where the applicant is in the process of obtaining development approval at the time of applying for a liquor licence, this evidence can be provided after an application is lodged, and at any time before the licence is granted. Councils are notified of all liquor licence applications. If made online, the ILGA notifies council of the application automatically, otherwise the applicant is responsible for notification.

Stakeholders' description of burden and proposed solutions

- Councils incur costs in certifying for the ILGA that development consent has been granted. The ILGA should require applicants to provide evidence of development consent.
- Councils spend significant resources to research historic data to confirm DA consents are in place. Remove obligation on councils and require applicants to do the research and provide relevant DA consents to OLGR.
- Inconsistencies between approved hours of operation under the DA and under the liquor licence. The ILGA should ensure the hours of operation under a liquor licence are consistent with hours of operation under the DA.

IPART analysis

- A desk-top evaluation of several council websites shows councils impose charges for obtaining copies of development consents. Some councils provide information related to more recently determined DAs on their websites free of charge, so applicants can undertake a search and obtain a copy directly themselves eg, The Hills Shire Council provides this information for DAs post 1 Sept 2004. Only councils are able to provide this information to the public. In future, it is anticipated that the ePlanning program will enable online access to development consents, and allow for the lodging and tracking of development applications.
- The OLGR advised that a liquor licence applicant is responsible for providing evidence of the relevant development consent. Liquor licence applicants can provide evidence of development approval in two ways:
  - providing copies of the council’s development consent directly to the ILGA; or
  - through the council ticking a box to confirm development approval in the form they receive as part of the notification requirements, and sending it back to the ILGA.
- Regarding inconsistent trading hours, the OLGR advised:
  - Councils approve trading hours under planning laws. The ILGA is bound by the trading hours prescribed by the Liquor Act 2007 and regulations. These laws have different objectives and require different considerations.
  - The ILGA cannot approve trading hours in excess of the trading hours approved by councils. Trading hours approved under the liquor laws that are less than those approved by councils should not create any enforcement issues for councils.
  - Licensed venues can apply for extended liquor trading hours under the Liquor Act 2007 to align their liquor licence with the development consent’s business hours. Each application is assessed on its merits.
- Inconsistent trading hours can cause confusion for applicants and stakeholders (eg, adjoining neighbours). This in turn has resource implications for councils’ compliance staff who respond to complaints and inquiries concerning licensed premises. It would be preferable to move towards a system with better integration so that this inconsistency is avoided.
- Structural reforms to the liquor and gaming regulatory framework are to be implemented through the Gaming and Liquor Administration Amendment Bill 2015, which was introduced to Parliament on 27 October 2015. These reforms include the creation of a new body, Liquor and Gaming NSW. According to the OLGR, the NSW Government is committed to reforming and integrating the liquor licensing and planning processes, and
Conclusion

- The Independent Liquor and Gaming Authority, and Liquor and Gaming NSW (if the structural reforms proceed), should ensure the liquor licence application process places the burden of providing evidence of development consent solely on licence applicants, and not on councils.
- Integrating the liquor licensing and planning processes to achieve consistent trading hours would remove confusion for applicants and stakeholders, and reduce compliance burdens on councils.
- Councils can charge fees to provide copies of development consents or can provide development consents free of charge on their websites to applicants for liquor licences.

8. Review of environmental factors (REFs)

Councils must undertake a review of environmental factors (REF) under Part 5 of the EP&A Act, where the council is the determining authority for its own activities (eg, road construction).

Stakeholders’ description of burden and proposed solutions

- REFs are needed even for minor activities like maintenance of road reserves. The information requirements are excessive and have no value/impact on the eventual outcome. REFs should not be needed for minor road maintenance.

IPART analysis

- A significant portion of minor activities undertaken by public authorities, including minor road maintenance works to the pavement and shoulders, and many other types of development routinely undertaken by public authorities, are listed as exempt development in the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) and do not require an assessment under Part 5 of the EP&A Act. Part 5 assessments are required for activities that are not minor but are expected to have some impacts that require assessment.
- In our Local Government Compliance and Enforcement – Draft Report (2013), we made a draft best practice finding that Councils would benefit from using an Electronic Review of Environmental Factors (e-REF) Template which assists councils in undertaking Part 5 assessments under the EP&A Act of their own activities (eg, road construction). This e-REF template was developed by the Hunter & Central Coast Regional Environmental Management Strategy (HCCREMS), which is the environmental division of Hunter Councils Inc (the Hunter region’s ROC).
- Prior to the e-REF template’s introduction, councils in the Hunter region were being prosecuted by the EPA for undertaking these activities poorly. This online tool assists councils in completing this process correctly, saves time, and secures better environmental outcomes.

Conclusion

- Many minor road maintenance works undertaken by councils would be exempt under the ISEPP from the requirement for a Part 5 assessment under the EP&A Act.
- Councils would benefit from using the Electronic Review of Environmental Factors (e-REF) Template in undertaking Part 5 assessments under the EP&A Act of their own activities, including road construction. This electronic tool has been developed by the Hunter & Central Coast Regional Environmental Management Strategy (HCCREMS), the environmental division of Hunter Councils.
9. Illegal sex services premises

Under current Government policy sex work has been decriminalised in NSW. Consistent with that policy, sex services premises (as defined in the EP&A Act) are treated as a development requiring planning consent from their local council. Where a suspected sex services premises does not have planning consent, community complaints are directed to the council and it is up to the council to enforce the planning laws to shut them down. However, illegal brothels are often connected with other serious criminal activity which councils have no powers to investigate. The council must often employ private investigators to collect the evidence necessary to establish that the premises are sex services premises without planning consent.

Stakeholders’ description of burden and proposed solutions

- Definition of “brothel” creates a compliance burden for councils – have to establish whether there is more than one worker. This is unnecessarily complex.
- High costs to councils from inspections, investigations and enforcement.
- Illegal brothels are often associated with related immigration, drugs and organised crime issues. Council is not best placed to address these issues holistically.
- Sex services should be dealt with consistently, irrespective of the number of workers.
- This should be dealt with by police, considering the risk to council officers. State Government (police) should have responsibility – better placed to provide coordinated and efficient response.

IPART analysis

- The NSW Parliament, Legislative Assembly, Select Committee on the Regulation of Brothels report (10 November 2015) recommends a new licensing system for owners of brothels. This would require all owners, managers and employees (except sex workers) and associates to be ‘fit and proper’ persons to be affiliated with a licensed brothel. Licensed brothels would still require planning approval.
- The Committee also recommended:
  - For the purposes of any future law, there should be a uniform definition of ‘brothel’ across all legislation.
  - If the licensing system does not proceed, there should be greater resources allocated to councils to investigate and prosecute owners of unauthorised brothels and OLG should provide advice on the best methods of investigation and enforcement.
  - Regardless of whether a new licensing system is implemented, there should be greater coordination between councils, police, NSW Health, Safework NSW and Federal agencies in relation to identified breaches of any kind (i.e., planning, health, immigration, etc).
  - A specialist unit similar to the VIC Police Sex Industry Coordination Unit should be established in NSW Police and appropriately resourced to coordinate the response of relevant local, State and Federal agencies to ensure brothels are operated lawfully.
- If the new licensing system is implemented, the Committee recommends a system of coordinated State and council enforcement so that before any council proceedings for planning breaches are commenced:
  - Council notifies the new Police Sex Industry Coordination Unit of the suspected planning breach.
  - Police and the new proposed licensing body take action to determine whether the brothel is illegal.
  - Priority is given to Police prosecutions related to licensing or other criminal matters but parallel planning enforcement could also be undertaken by councils.
  - Police should be given the option to prosecute planning breaches that relate to brothels, on instruction from the relevant council, in the same proceedings as licensing and criminal prosecutions in order to save costs and avoid a multiplicity of proceedings.
 autres identifiés de charges


- Si le nouveau système de licences proposé par la *Standing Committee on the Regulation of Brothels* ne se poursuit pas, cette approche de meilleure pratique pourrait aider à coordonner les investigations sur les maisons closes illégales entre les conseils et la Police du NSW. La Police possède les compétences, l’expérience et les pouvoirs plus étendus pour mener de telles investigations. Les conseils n’en disposent pas. Nous ne pensons pas que les conseils devraient être ‘maitrisés’ pour mener des investigations sur les maisons closes illégales ou que OLG aurait les compétences pertinentes pour guider les conseils dans cette zone. Sous un MoU entre les conseils et la Police du NSW, un accord pourrait être trouvé sur les investigations de maisons closes illégales. Où il n’y a pas d’autorisation de planification, les conseils pourraient reporter ces établissements à la police pour l’investigation. Les conseils pourraient ensuite utiliser les enquêteurs de la police en tant que témoins pour établir des violations des lois de planification, afin de fermer les maisons closes illégales. La police pourrait également enquêter, ou se référer à d’autres autorités d’État ou fédérales, n’importe quel autre coupable identifié qui est lié à la maison close illégale, tels que la sex slavery, la drogue, l’évasion fiscale ou les affaires d’immigration illégale.

- Ce MoU pourrait être négocié entre le Comité Local de Gouvernement du NSW (au nom de tous les conseils du NSW) et la Police du NSW, plutôt que localement (c’est-à-dire, chaque conseil avec sa propre police locale).

**Conclusion**

Si le nouveau système de licences proposé par la *Standing Committee on the Regulation of Brothels* ne se poursuit pas, le Comité Local de Gouvernement du NSW (au nom de tous les conseils du NSW) se benefiterait d’entrer en MoU avec la Police du NSW pour instituer un approche coordonnée sur l’enquête sur les maisons closes illégales. Ce MoU serait lié à l’enquête et l’assistance à être fournie par la police, et la coordination avec les conseils, en relation à des établissements qui sont soupçonnés de maisons closes et n’ont pas d’autorisation de planification. Sous ce MoU:

- la police enquêterait les maisons closes suspectées
- les conseils utiliserait les enquêteurs de la police en tant que témoins pour établir des violations des lois de planification dans les procédures des conseils, afin de fermer les maisons closes illégales, et
- la police pourrait également enquêter ou se référer à d’autres autorités d’État ou fédérales n’importe quel autre coupable identifié que les maisons closes illégales.

**10. State Environmental Planning Policy No 44 – Koala Habitat Protection**

Ce polit pointe si viser le bon conservation et la gestion des zones naturelles qui fournissent une habitation pour les koalas pour assurer la population permanente d’espèces dans leur aire de répartition et inverser la tendance au déclin de la population de koalas.

**Stakeholders’ description of burden and proposed solutions**

- Englobe en zones où les koalas sont peu probablement à être trouvé et augmente les coûts et les délais. Réviser pour qu’il n’est pas applicable à ces zones (par exemple, où les koalas n’ont pas été signalés en 50 ans).
Other identified burdens

Review of reporting and compliance burdens on Local Government

IPART analysis

- The SEPP requires councils to identify areas that are “potential koala habitat” before it can grant development consents in these area. A potential koala habitat is an area of native vegetation where the trees of the types listed in Schedule 2 of the SEPP constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.

- If the development area is “potential koala habitat” then the council must determine if it is “core koala habitat”. Core koala habitat is an area currently inhabited by koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population. It would not include areas where koalas have not been sighted for years. If it is “core koala habitat” a plan of management must be prepared for the area and any development consent granted must not be inconsistent with that plan.

- This issue was only raised at our Wagga Wagga workshop.

Conclusion

The suggested change to the SEPP to reduce the burden on councils to identify potential koala habitat (which involves surveying by a relevant tree expert) would be a policy change with implications for the protection of koalas and existing (or future) koala habitat.

11. Flood control

Stakeholders’ description of burden and proposed solutions

- The planning system for creating flood related development controls in an environmental planning instrument, such as a LEP and other planning control documents (ie, DCP) under the EP&A Act, is a parallel process with establishing flood development controls through a floodplain risk management study and plan in compliance with the NSW Floodplain Development Manual under the LG Act. The current system requires two planning exhibition and adoption processes to run, one after the other, in order to implement flood related development controls.

- The parallel processes are cumbersome, time-consuming and lead to long delays in implementing flood related development controls. NSW flood policy and planning legislation should be integrated.

IPART analysis

- Floodplain risk management studies pursuant to the Floodplain Development Manual are used to determine flood risk areas, not set flood related development controls. Such studies provide the information to determine appropriate locations for flood related development controls. Flood related development controls can only be included in LEPs and/or DCPs.

- This issue was raised by only one council.

Conclusion

It appears necessary that the two processes – undertaking floodplain risk management studies to determine flood risk areas and developing flood related development controls in a council’s planning instruments – be undertaken sequentially.

Source: Various submissions and questionnaires to IPART, and comments from councils at the Coffs Harbour workshop.
### 1. Contracts for Certification Work

The Building Professionals Act 2005 was amended in 2013 to require a written contract between the development beneficiary (owner) and the certifier. The purpose of the mandatory contract was to ensure the owner (not the builder) appointed the certifier and was provided with contract details for the certifier, a description of the certification work to be undertaken, details of the certifiers’ insurance and the fees and charges involved. The contract was also required to be accompanied by a document about the statutory obligations of accredited certifiers (as published by the Building Professionals Board (BPB) on its website).

### Stakeholders’ description of burden and proposed solutions

- This contract was not seen to be of value to either customers or the council. Councils viewed it as an unnecessary process.
- Councils called for this requirement to be removed.

### IPART analysis

- The Draft Lambert Building Review criticised the current contract for implying that the certifier is acting as the agent of the owner/developer when the certifier is a regulator.
- The key issue for Lambert was ‘whether it is possible to ensure that certifiers act on the basis that their prime duty and obligation is to undertake a regulatory responsibility in the public interest, and that commercial interests are a secondary consideration.’
- The review has recommended a restricting of the contract into an enforceable letter of engagement which makes clear the regulatory role and responsibility of the certifier. The review considered but ultimately decided against removing the requirement for a contract altogether.
- Given the ongoing nature of the Lambert review and its recommendations directly covering this area, IPART has chosen not to make a recommendation or finding on this issue at this time.

### Conclusion

If the draft recommendations of the Independent Review of the Building Professionals Act 2005 are supported, then the mandatory contract between certifiers and owners/developers will be replaced with an enforceable letter of engagement. This letter would clarify the regulatory role of the certifier compared with that of the builder. It would enhance consumer protection by providing useful information on the certifier to owners and developers.
Table B.6 Public Land and Infrastructure

1. Ministerial approval of leases and licences of community land

Under the *Local Government Act 1993*, proposed leases and licences of community land for greater than five years must be approved by the Minister for Local Government where:
- a person objects to the proposal, or
- there is no objection, but the period of lease or licence exceeds 21 years.

Leases and licences for periods of less than five years do not require Ministerial approval. Leases and licences for periods of between five and 21 years do not require Ministerial approval if there are no objections.

Stakeholders’ description of burden and proposed solutions

- Councils argue that the requirement for Ministerial approval for some leases and licences is an unnecessary burden and can hold up lease or licence agreements. Some councils consider they should be able to approve all leases and licences on their community land.

IPART analysis

- Community land is generally set aside for the public to enjoy. Leases and licences of community land limit the ability of the public to use that land and reserve it for the exclusive use of one group or person.
- The requirement for Ministerial approval of leases and licences of community land is a safeguard to protect the interests of the community where the proposed lease or licence would restrict public access to community land for a long period of time.

Conclusion

The requirement for Ministerial approval of proposed long-term leases and licences of community land is an appropriate safeguard to protect the interests of the community. The Office of Local Government should ensure there are no unnecessary delays in this Ministerial approval process.

2. Compulsory acquisition of property

Councils may acquire land under chapter 8, Part 1 of the *Local Government Act 1993*, either by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*. A council must have Ministerial approval before giving a notice of proposed acquisition.

Stakeholders’ description of burden and proposed solutions

Inefficient compulsory acquisition processes – could be simplified to reduce the direct financial costs and the time delay costs experienced by councils using the existing process.

IPART analysis

We note that the only difference between the process for compulsory acquisition of property for councils and other State authorities is the requirement to obtain the approval of the Minister for Local Government before giving a proposed acquisition notice. This requirement may be justified for probity reasons.

Conclusion

The processes councils are required to comply with when compulsorily acquiring land are substantially consistent with processes applying to other State authorities and are in place to provide public protections.
3. RMS Drives Access Agreement – audit of compliance
RMS Drives is a vehicle registration and driver licencing database. It contains information useful to councils such as on: abandoned vehicles, rubbish dumping from vehicles, insecure loads, load weight restrictions and parking offences.

Stakeholders’ description of burden and proposed solutions
- Excessive reporting and auditing requirements with quarterly compliance statements and an annual audit required.

IPART analysis
- RMS advises that it has no legal requirement to grant access to councils, and that councils receive their access free of any contribution to the system’s running costs.
- RMS also argues that councils can present a privacy risk as they are not law enforcement agencies and may not have equivalent governance structures. Given these points, RMS sees the auditing requirements as reasonable in exchange for access to the database and the attendant benefits.

Conclusion
The requirement for annual audits of council compliance with the RMS Drives Access Agreement is reasonable to help manage and monitor the associated privacy risks.

4. Parking meters/ ticket machines
Where councils have put in place a paid parking scheme, they are required to provide a physical ticket machine. This places limits on council’s ability to use an alternative cashless/internet based system.

Stakeholders’ description of burden and proposed solutions
- The requirement for physical presence of a parking ticket machine on the street restricts use of innovative technologies and new systems to improve customer experience.
- The advantages of any new system are reduced by the need to maintain existing infrastructure.

IPART analysis
- RMS advises that while there are benefits to removing parking machines, chiefly in the reduction of maintenance and parking inspector costs, cashless and internet based technologies are not yet used broadly enough across the community to justify the removal of physical machines.
- Once this type of technology is in greater use, this issue could be revisited.

Conclusion
Given the lack of penetration in cashless and internet based payment systems it is not yet appropriate to remove the requirement for councils to provide a physical ticket machine.

5. Local traffic committees and control of traffic on local roads
RMS delegates certain aspects of traffic control on local roads to councils. Before exercising their delegated functions councils must refer traffic related matters to their own Local Traffic Committee (LTC). This LTC serves as a technical review committee but its advice is not binding. Instead councils who wish to act contrary to LTCs advice must notify RMS and the NSW Police and wait 14 days before proceeding, so that RMS can conduct a review.

Stakeholders’ description of burden and proposed solutions
- Excessive involvement of local traffic committees, even for small changes
- Delays in RMS approvals and unnecessary consultation
- Councils should have greater autonomy in this area, for example, councils should be allowed to assess themselves under standardised criteria.
IPART analysis

The current LTC process appears to be inefficient, particularly when dealing with low risk or minor traffic control issues. However, RMS advises that LTCs are currently the subject of a review which is due for completion by June 2016. This review will examine the strategic purpose and operations of LTCs, including how consultation is handled.

Conclusion

The current review of LTC being undertaken by RMS is expected to improve the functionality of LTCs, addressing the concerns of stakeholders.

6. Road Maintenance Council Contracts

State roads are maintained by 78 councils in regional NSW under Road Maintenance Council Contracts (RMCC) with RMS. These contracts have a value of approximately $215-220 million per annum.

Stakeholders’ description of burden and proposed solutions

- Overly prescriptive documentation and reporting processes.
- Inconsistency in requirements across different RMS regions.
- Short confirmation time given by RMS compared with IP&R leads to uncertainty and inefficiencies.

IPART analysis

- RMS advises:
  - It is working with councils to provide a 12 month lead time both for councils and its own works program. The current aim is to have this in place by July 2017.
  - In recognition of the varying capacity of councils, RMS has adopted a partnership approach, providing training to council officers to assist in building skills, to comply with contracts, standards and legislative requirements as well as sharing documents and templates.
  - RMS conducts several activities in order to coordinate RMCC activities with councils. These include:
    - quarterly regional peer exchange meetings with councils and RMS contract managers
    - bimonthly meetings of a Steering Committee, with representatives from the OLG, LGNSW, IPWEA and the Union, and
    - bimonthly meetings of a Steering Committee task group, with 3 RMS representatives and 5 council representatives (1 from each region) that meet bimonthly.
  - RMS continually reviews its practices to ensure consistency in administration of RMCC across all regions.
  - The Steering Committee is reviewing the records needed to comply with legislation. The controls required in smaller projects are the same as a large infrastructure project.

Conclusion

Given limitations on funding commitments, it is not possible to give more than 12 months notice. RMS should continue efforts to ensure that it gives councils the full 12 months’ notice on RMCC forward works programs.

7. Rural addressing

Rural addressing provides a standardised means of locating rural properties and is an accurate, easy to understand system, which is easily applied. This system has been implemented Australia wide.

Stakeholders’ description of burden and proposed solutions

- Burden for councils in having to respond to queries and complaints from residents who do not understand the State’s policy.
- Suggestion that this burden could be reduced via a State funded educational campaign required to raise awareness.
B Other identified burdens

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<th>IPART analysis</th>
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<td>Rural addressing has been adopted nationally. Many councils have simple fact sheets or information on their websites that explain how rural addressing works. There appears to be minimal burden in this area given the standardised nature of information available.</td>
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<th>Conclusion</th>
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<td>The burden on councils imposed by the rural addressing system is minimal.</td>
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### 8. Naming of roads

Councils are the predominant ‘road naming authority’ in NSW. Councils must notify proposed road names in newspapers, and to ten authorities (public agencies or officers). If any of the authorities object, then the name can only be gazetted following Ministerial approval.

#### Stakeholders’ description of burden and proposed solutions

- The preparation of reports and applications to the NSW Geographical Names Board (GNB) is an onerous and unnecessary process.
- Stakeholders consider that communities should be able to name their own roads according to GNB guidelines.

#### IPART analysis

- The current naming process is transparent and appears easy to understand for regulatory bodies and the public. The consistent approach to road naming benefits emergency services, transport and delivery services, and provides for community input.
- In 2013 the GNB published the Road Naming Policy for NSW which adopts a standardised process to ensure consistency and to avoid ambiguity. It was designed to overcome different interpretations of the Regulation. It was developed in collaboration with councils.
- The NSW Online Road Naming System, also launched in 2013, streamlines the process, removed the requirement to individually notify all authorities and automatically gazette changes. This has substantially reduced administrative burdens in this area.

#### Conclusion

The procedural requirements for naming of roads are reasonable given the benefits consistency. The road naming process has also recently been streamlined, minimising any associated burdens for councils.

### 9. Use of Crown Roads in the management of public roads

Where councils are rectifying a road reserve or realigning a road and want to use a Crown road for this purpose they are required to purchase the road from the Crown.

#### Stakeholders’ description of burden and proposed solutions

Stakeholders argue that Crown roads being used for this purpose should be provided by the State at no cost as payment for these roads represents a burden on council ratepayers for an activity originally a responsibility of the State.

#### IPART analysis

DPI advise that the Treasurer’s directions state that a return needs to be recovered for the disposal of Crown assets. They are usually very conservatively valued at minimal cost by the Valuer-General, based on statutory land value.

#### Conclusion

The requirement for the State to recover a return for the disposal of Crown assets is appropriate.
10. Cemeteries reporting
Cemeteries and Crematoria NSW (C&C) was established under new legislation in 2013 to support and oversee the interment industry and provide information to the community. Councils, as managers of cemeteries have new reporting obligations under the *Cemeteries and Crematoria Act 2013*. This reporting involves:
- Information to enable C&C to maintain a register of all cemeteries and crematoria in NSW.
- Annual activity surveys/statements showing the number of services provided.

**Stakeholders’ description of burden and proposed solutions**
- Councils have argued that annual reporting is excessive and that only an initial opening report and additional reports once capacity is reached is required.

**IPART analysis**
- Council reporting appears to be the minimum necessary to support C&C’s statutory functions including:
  - Assessing current and future interment needs and developing planning strategies for cemetery space to meet those needs.
  - Providing advice and recommendations to the Minister in relation to the sustainable use of cemetery and crematorium space and capacity.

**Conclusion**
The current level of reporting appears reasonable given the statutory functions of C&C.
Table B.7 Animal control

1. Dangerous dogs / dog attack reporting

Councils must report any relevant information they receive about a dog attack within 72 hours of receiving it, using the dog attack incident reporting module in the central register. Dog attack is broadly defined as "an incident that involves or is alleged to involve a dog rushing at, attacking, biting, harassing or chasing a person or animal (other than vermin), whether or not an injury is caused to the person or animal" (Companion Animals Regulation 2008 cl 33A).

Stakeholders' description of burden and proposed solutions

- The timeframe of 72 hours to report a dog attack is impractical. Should change this requirement to 'as soon as reasonably practical' so all the relevant details can be reported after the investigation is completed.
- There is questionable value in reporting while a council is still responding to an incident.
- Reporting is too frequent and should be annually or 6-monthly.
- Remove or extend the 72 hour timeframe (eg, 14-21 days) or adjust it to reflect the scale of the attack (eg, death).

IPART analysis

- Councils are required to enter information in the central register "within 72 hours after any relevant information is received by the council". The Regulation lists what is "relevant information". As a result, councils are required to make multiple entries in the register until all "relevant information" is recorded in the register.
- OLG undertakes the quarterly and annual reporting directly from data collected in the central register, so this is not a reporting burden on councils. OLG reports this data quarterly and annually on their website, in a timely fashion.
- According to OLG, the value of reporting dog attacks in the central register within 72 hours is being able to find out whether the dog is already listed as dangerous or menacing, and linking the information about the dog attack with the other information already in the register (eg, breed), if it is a registered dog.
- According to OLG, there is considerable media and community interest when serious dog attacks occur.
- The NSW Government committed to undertake a comprehensive review and redesign of the register and registration system (NSW Government Response to Companion Animals Taskforce Recommendations, Feb 2014). If the new register has the capabilities we have recommended in Chapter 11 of this report ie, is accessible online in the field, the burden of reporting dog attacks would be considerably reduced.

Conclusion

- A new redesigned and modernised central register that is available online and mobile (ie, accessible in the field) would make this reporting requirement less onerous for councils.
- It is important that data on broadly defined "dog attacks" (ie, aggressive incidents involving dogs) be available in a timely fashion in order to proactively manage dangerous dogs and prevent future attacks.
- Given the high level of community interest in dog attacks, there could be value in the Office of Local Government making companion animals data available through the new NSW Government Open Data portal at www.data.nsw.gov.au.

2. Companion animals education

Stakeholders' description of burden and proposed solutions

- Council provision of companion animals education is an unnecessary duplication of effort across LGA boundaries.
- Companion animals education could be provided by Service NSW. It already does this for barking dogs.
**IPART’s analysis**

- OLG is the key provider of education (not councils), and gives grants to councils to run their own education programs under the Responsible Pet Ownership Grants Program.

- Service NSW is a fee for service model. The barking dogs “education” is simply a link to the EPA website information on barking dogs.

**Conclusion**

- OLG already has primary responsibility for providing companion animals education, not councils. At this time, the Service NSW portal would not appear to be a useful or affordable vehicle for companion animals education.

- However, when the new one-step registration process is implemented, it will be necessary to enable pet owners to transfer registration, change address or other personal details online in the register. As discussed in Chapter 11 of this report, subject to the cost of using Service NSW and the ability to interface with the central register, there could be value in OLG enabling owners to change their ownership, address or other personal details through the Service NSW portal. If this occurred, there could also be value in OLG investigating whether the Service NSW portal would be a useful and affordable vehicle for companion animals education.
Other identified burdens

Table B.8  Environment

1. Waste Management - Reporting requirements

Councils in the regulated area (Metropolitan Sydney, the Illawarra and Hunter regions, the Central and North local government areas to the Queensland border as well as the Blue Mountains, Wingecarribee and Wollondilly local government areas) must submit monthly reports on the quantity and type of waste received and volumetric survey results twice a year to the EPA. Facilities outside the regulated area must provide the EPA with a yearly waste data report if requested. In addition, all councils submit annual data for the EPA's Waste and Resource Recovery Data Survey (LG Waste Survey) and report on waste in their annual reports.

Stakeholders’ description of burden and proposed solutions

Stakeholders considered that the Waste Management reporting requirements are duplicative and onerous. Councils must submit monthly waste levy reports, 6-monthly volumetric reports, the LG Waste Survey as well as their own annual reports. An example of duplicative reporting is the information about loads of asbestos and tyres which are included in both the monthly waste levy return and annual LG Waste Survey.

- Councils suggested ways to streamline these reporting requirements, for example by:
  - replacing monthly and 6-monthly reporting with a consolidated annual return that has aligned reporting timeframes
  - standardising the consolidated annual return for ease of collation by the EPA, and
  - clarifying and making definitions consistent to allow trend measurement.

IPART analysis

- The information collected in the monthly waste levy returns is different from the LG Waste Survey, which covers councils’ domestic waste and recycling from council kerbsides, drop off and clean-up services.
- Not all councils operate a landfill or pay the waste levy; however, all councils provide kerbside domestic waste collection services.
- The EPA will be conducting a review of the LG Waste and Resource Recovery Data Survey in consultation with local government commencing in November 2015.

Conclusion

The EPA review proposed to be undertaken in consultation with local government is expected to consider and eliminate duplications with councils’ other waste reporting obligations, such as in their Annual Reports, and align different waste reporting timeframes for councils where possible.

2. Waste Management – Issues for regional and remote councils

Stakeholders’ description of burden and proposed solutions

Stakeholders identified that:

- a one-size-fits-all approach to regulating landfills (for example, the requirement for landfills to be manned) is onerous for regional and remote councils

- council landfills without weighbridges have difficulty estimating the amount of waste received each year, resulting in rough estimates being submitted to the EPA.

To address these issues, councils suggested that a risk management/cost-benefit approach to the manning of landfills could be considered for remote landfills. Exemptions or on-site audits could replace frequent reporting for landfills under a threshold.

IPART analysis

- The EPA advised that, unless required by a licence condition, there is no requirement for small regional and remote landfills to be manned. Regional and remote landfills are not liable for the waste levy. They are only required to report annually to the EPA. The EPA does not consider this requirement is onerous.
Other identified burdens

Review of reporting and compliance burdens on Local Government

However, waste from a regulated area is liable for the levy even if received in a non-regulated landfill. Not manning landfills increases the risk that waste will be transported from regulated areas to unregulated areas to evade the levy. Requiring landfills to be manned can result in restricted opening hours due to the cost. This can increase the risk of illegal dumping. Preventing waste levy evasion needs to be balanced against preventing illegal dumping.

The EPA is working with regional and remote councils to:
- Develop regional waste avoidance and resource recovery strategies.
- Consolidate very small landfills into larger waste disposal facilities. Other small landfills are being converted into transfer facilities (from which the waste is transported to the consolidated facility). The EPA is funding this process.
- The EPA advised it will consider all reasonable approaches to reporting landfill data for regional and remote landfills.

### Conclusion

The EPA is working with regional and remote councils to achieve scale efficiencies and meet minimum environmental performance requirements. This is expected to address stakeholder concerns.

### 3. Asbestos

Councils have responsibilities concerning illegally dumped asbestos and structures containing asbestos that are burnt down or demolished.

#### Stakeholders' description of burden and proposed solutions

Stakeholders have indicated that:
- There is no clear delineation between State and council responsibilities concerning asbestos hazards when houses with asbestos burn down or are demolished. Councils lack expertise in this area.
- There are limited legal options for disposal of asbestos in the regions.
- Councils are left to deal with illegal dumping of asbestos (eg, roadside dumping). They suggest the State should be dealing with these issues not councils. Alternatively, councils should be given a CSO to deal with illegal dumping issues.
- The current annual funding of $0.5 million for the whole state from the Environmental Trust to clean up illegally dumped asbestos is inadequate.

#### IPART analysis

- The EPA is aware of the concerns regarding the cost of disposal and illegal dumping of asbestos, and is exploring approaches to address these issues, including a trial involving waiving the waste levy for asbestos in certain circumstances.
- The Model Asbestos Policy developed by LGNSW in 2012 in partnership with the NSW Government is an example of best practice in asbestos management. These guidelines are on the OLG website and provide ongoing support to councils across a range of asbestos issues.

Additionally, IPART's *Local government compliance and enforcement – Draft Report* found Regional Illegal Dumping (RID) squads are an example of best practice. The squads specialise in dealing with illegal dumping across local government boundaries. Funded by the EPA, their activities include:
- identifying and patrolling illegal dumping hotspots
- investigating illegal dumping incidents and taking action against offenders, and
- organising clean ups.

Wider awareness and formation of RID squads could potentially help councils. Currently there are RID squads in:
- Western Sydney (6 councils)
- Sydney (14 councils)
- Hunter / Central Coast (10 councils)
Other identified burdens

- Southern Councils Group (7 councils)
- ACT-NSW cross borders (ACT and 4 NSW councils).

**Conclusion**

Regional Illegal Dumping (RID) squads, which the Environment Protection Authority have developed in partnership with councils, can help councils combat illegal dumping.

### 4. Contaminated land – s149 Planning certificate

Councils must specify in a planning certificate issued under section 149 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) whether the land to which the certificate relates is significantly contaminated.

State Environment Planning Policy No 55 – Remediation of Land (SEPP 55) requires planning authorities to consider the potential for contamination to adversely affect the suitability of a site for its proposed use at the development and rezoning stage.

**Stakeholders’ description of burden and proposed solutions**

Stakeholders identified issues with these requirements and proposed solutions, including:

- It is a burden to become accredited and undertake testing. This could be addressed by state funding to develop capacity and implement policies.
- Legislation is out of date - SEPP 55 and the *Contaminated Land Management Act 1997* (CLM Act) and the EP&A Act are inconsistent.
- In some cases, contamination may need to be reported under *Protection of the Environment Operations Act 1997* (Part 5.7), and the CLM Act (section 60). This is a redundant process (requiring the same information, to the same State Government organisation) that could be streamlined.

**IPART analysis**

The EPA advised that:

- Funding to develop capacity is available. The Regional Capacity Building Program, funded by the Environmental Trust, is designed to ensure responsible land managers in rural areas have capacity to deal with contaminated land management issues. Four council groups from regional areas have received grants to employ specialist technical staff in contaminated land area.
- Maintaining information on actual or potential land contamination is important for managing it. Councils are required to:
  - record information in their property information systems to assist planning authorities carry out land use history functions
  - minimise risk to health and the environment
  - provide a means for informing stakeholders of the presence, or potential for, contamination on land, and
  - acknowledge any information limitations.
- It maintains a register for significantly contaminated land, which the CLM Act designates as the EPA’s responsibility.

In response to issues of inconsistencies between SEPP 55 and the CLM Act, the DPE advised that SEPP 55 and its accompanying guidelines are currently being reviewed for legislative consistency and to assist councils undertaking their responsibilities with contaminated land.

The EPA is also working to combine various contaminated land notification forms currently required under both the POEO Act and CLM Act. This would streamline and reduce reporting requirements; however, it is not specific to councils.
Conclusion

The current review of the State Environment Planning Policy No 55 – Remediation of Land is aimed at increasing consistency with the Contaminated Land Management Act 1997 and the Environmental Planning and Assessment Act 1979. Additionally the EPA has provided assistance to regional councils to build capacity to deal with contaminated land management issues through the Regional Capacity Building Program funded by the Environment Trust. There is potential that the program may continue in future. Further funding applications have been invited.

5. Maintaining a register of environmental regulatory actions

Under section 308 of the POEO Act, councils are required to maintain a public register of environment protection, penalty and noise control notices and convictions or proceeding taken by or against the council.

The form of the register is not prescribed. It can be kept in any form determined by the council.

Stakeholders’ description of burden and proposed solutions

Ku-ring-gai Council maintains a separate register on its website. While it noted this is not especially costly, it considers it is inefficient as the requirement is little known, rarely used and cumbersome for the public looking for data from several LGAs. It suggests a centralised online register could be implemented to be managed by a lead agency for the whole state.

The EPA indicated that:

- Maintaining records of regulatory actions is best undertaken by the regulatory authority issuing the action. This ensures that information is up to date and can easily be amended by the authority if required.
- An online portal that allows uploading of notices would require significant funding and resources to develop and maintain.
- This approach may create an increased regulatory burden for some councils. Under current requirements, councils are able to determine the most desirable way to record notices and are not obliged to maintain a web-based public register.
- However, it will consider the suggestion to create a central register of notices and other regulatory actions taken by councils under the POEO Act, as part of future reviews of the POEO Act public register requirements.

IPART analysis

A centralised register may increase the burden and costs for those councils that currently use non-online reporting methods.

The POEO Act requires councils to maintain a public register to allow the community access to certain information. Currently, councils are able to determine the most desirable way to record notices and are not obliged to maintain a web-based public register. If a centralised register was required, councils would no longer be able to decide how notices are recorded, but would be subject to the online reporting requirements of the central register.

Conclusion

The maintenance of a public register is not costly for councils as they are able to decide how their own notices are recorded. Nevertheless, the EPA has advised it will consider the suggestion to create a central register of notices and other regulatory actions taken by councils under the POEO Act, as part of future reviews of the POEO Act public register requirements.
6. Threatened Species Conservation – Duplication of State and Federal legislation

A council, as a consent authority, public authority and government authority, is required to report on actions taken in the implementation of recovery and threat abatement plans for threatened species, populations, ecological communities and plants.

### Stakeholders' description of burden and proposed solutions

Stakeholders identified that there is:
- unnecessary duplication of Threatened Species lists in the NSW Threatened Species Conservation Act 1995 and the Federal Environmental Protection and Biodiversity Conservation Act 1997
- duplication in the approval process for applications involving potential harm to threatened species to both State (S.91 Licence) and Federal Governments.

Stakeholders proposed that:
- the obligation to assess against both Acts should be removed and the assessment criteria made consistent
- the two departments should coordinate to avoid duplicate reporting requirements, for example, a coordinated, timely response to the applicant regarding approval could be provided, with combined and coordinated conditions of consent.

### IPART analysis

Current national and state threatened species lists appear to be duplicative in content and approval processes. In response to this issue, OEH advises that:
- All recommendations from the Independent Biodiversity Legislation Review Panel review have been accepted, including that the NSW Government work with the Commonwealth Government to harmonise their respective lists of threatened species. An MOU is currently being considered for signing between the State and Federal Government to begin this process. A new system would move towards a national list with regional lists identifying threatened species in each region.
- Developing a common assessment method for assessing and listing threatened species will streamline assessments for consent authorities.
- In February 2015 the Federal Minister for the Environment and the former NSW Minister for Planning signed an assessment bilateral agreement, under which the impacts on the environment from proposed major development will be assessed using NSW processes.
- An approvals bilateral agreement is being discussed which would accredit NSW approval processes and further reduce duplication.
- The assessment bilateral removes the requirement to assess the impact on the environment of proposed developments against both Commonwealth and State Acts. The proposed approvals bilateral will remove the need to seek Commonwealth approval, thereby further streamlining the process and reducing duplication.

### Conclusion

Under the assessment bilateral agreement signed in February 2015 between the Australian and NSW Governments, the impacts on the environment from proposed major development will be assessed using NSW processes, reducing duplication of Federal and State planning processes. Additionally, the proposed approvals bilateral agreement between the Australian and NSW Governments would accredit NSW approval processes and further reduce duplication.
7. Threatened Species Conservation

BioBanking is a market-based scheme that provides a streamlined biodiversity assessment process for development. It also provides an offsetting scheme that enables rural landowners to generate income by managing land for conservation.

Stakeholders’ description of burden and proposed solutions

Stakeholders identified that:

- the descriptions of the entities within BioBanking and the *Threatened Species Conservation Act 1995* are inconsistent as are the assessment methodologies
- duplication can occur due to the voluntary nature of BioBanking and the threshold test of significance – for example, an application could be assessed by council and also be required to be assessed by OEH
- insufficient detail and inaccurate mapping in OEH’s regional databases means councils must report on or assess threatened species which may not be in their area
- insufficient OEH guidelines on threatened species requires councils to produce a set of planning and management guidelines for several threatened species
- the council is responsible for enforcement of development consent conditions imposed by OEH in developments that require their concurrence.

IPART analysis

The OEH has been consulting with LGNSW on reforms that include a proposed Biodiversity Conservation Act to replace the *Threatened Species Conservation Act 1995* (and other related Acts). This would establish a new biodiversity offset scheme to replace BioBanking which is expected to resolve inconsistencies across different assessment methods and entities. The move towards harmonised threatened species lists would also mean greater certainty for councils about what threatened species are in their regions.

OEH advised that it prepares the management plans for threatened species. Some councils choose to prepare their own plans for their communities and to apply for grant funding. OEH advised that it does not impose consent conditions. Councils may seek OEH advice, however they are responsible for their own development consent conditions.

We note that OEH funding from the Waste and Environment Levy is provided to Local Land Services (LLS) to deliver natural resource management programs including for threatened species.

Conclusion

The NSW Government’s proposed Biodiversity Conservation Act would by replacing the *Threatened Species Conservation Act 1995* and other related Acts, establish a new and expanded biodiversity offset scheme to replace BioBanking. This is expected to resolve inconsistencies across different assessment methods and entities.

8. Other functions under the Protection of the Environment Operations Act 1997

Councils regulate environmental impacts of non-scheduled activities (ie those activities which are not licensed or otherwise regulated by the EPA) including by issuing environmental notices, prosecuting environmental offences and undertaking environmental audits.

Stakeholders’ description of burden and proposed solutions

Councils identified that:

- their responsibilities to enforce breaches are not backed by enforcement powers
- they may not have specialist expertise in every aspect of environmental protection, eg, air, noise and water pollution, biodiversity, contaminated land management

They submitted that the Government should address cost shifting in this area and that agencies could provide officers to directly assist councils in complex activities and investigations.
IPART analysis

We consider there are issues relating to expertise and enforcement powers of councils. In some instances they may just require advice from the EPA, and in others they may require assistance from police for enforcement.

The EPA currently assists councils (on request where appropriate) in managing complex incidents and subsequent investigations. It also recognises the need to re-engage with councils. It recently held a workshop with Sydney Metropolitan Councils to re-establish networks and relationships. The EPA also supports councils through provision of regular council-focused capacity building training courses focused on the POEO Act and powers of authorised officers.

Draft recommendation 2 of our *Local government compliance and enforcement – Draft Report* proposed subject to cost benefit analysis, the NSW Environment Protection Authority should engage in a Partnership Model with local government, similar to the Food Regulation Partnership.

Conclusion

Implementation of Draft recommendation 2 of our *Local government compliance and enforcement – Draft Report* by the EPA would address the management of offences under the POEO Act through this Partnership.

9. Pesticide use notification plan

The Pesticides Regulation 2009 Clauses 19-23 requires public authorities (including local councils) to prepare and finalise a pesticide use notification plan, notify the EPA of the plan’s existence, and give public notice of any planned use of pesticides according to the plan when using pesticides on land owned by that authority.

Stakeholders’ description of burden and proposed solutions

Fairfield City Council indicated that the requirement for live uploads of pesticide use on each application is burdensome and that the council should be allowed to update its Pesticide Notification Plan and its mapping every five years and only need to display this information corporately.

IPART analysis

The EPA advised there is no requirement for live uploads of pesticide use on each application. Under the regulation, public authorities must prepare and publish a plan outlining how they will undertake public notification when pesticides are used in public places. The regulation requires councils to comply with their own commitments to give notice in the plan and to set a review period for the plan. Councils can determine the situations and form in which they give notice of their pesticide use (including the use of advertisements, signage or maps).

Conclusion

It is the council’s responsibility to prepare, publish and comply with its own pesticide use notification plan. There is no requirement for live uploads of pesticide use on each application unless this is part of the council’s own plan.
10. Noxious Weeds management

Under section 36 of the Noxious Weeds Act 1993, local government, as the local control authority, has responsibilities for the control of noxious weeds in its local area, including to develop, implement, coordinate and review noxious weed control policies and noxious weeds programs, and to carry out inspections of land in its local area. Councils are required to report to the NSW Government (Department of Primary Industries, (DPI)) on the carrying out of their local control functions, including details of species, infestation levels, and actions taken.

Stakeholders’ description of burden and proposed solutions

Stakeholders identified issues arising from:

- the scale of management responsibility for declared noxious weeds
- the mix of tenure (e.g., national parks, farmland) and lack of continuity in how weeds are treated on public compared to private land
- funding shortfalls, particularly for managing weeds on Crown land and RMS land
- transfer of weeds across council areas via travelling stock reserves (TSRs)
- differences between regions in weed issues that are not accounted for in the current classification system (council funding is attached to weed classifications)
- loss of funding due to the declassification of some weed types (when they become unmanageable).

The solutions proposed by stakeholders included:

- setting realistic targets for noxious weed management
- streamlining the declaration process and more declarations to trigger funding
- coordinating weed control efforts with a regional body to advocate and prioritise funding
- risk assessment for better targeting, to enable the spread of funding across classifications
- regulation of Crown and RMS land by DPI/EPA
- mandating best practice for dealing with weeds, e.g., best spraying methods
- better communication between LLS and local government about approved TSRs
- adopting a different approach to weed management, e.g., view it as regeneration of areas—eco-friendly and sustainable, so council can use volunteers.

IPART analysis

DPI indicated that most targets for weed management are set by councils who request declaration. All declarations are subject to extensive consultation. Currently, declarations do not trigger funding. Further, DPI advised that while the government can provide and promote best practice, it does not mandate how to deal with weeds.

IPART notes that the NSW Government has adopted most of the recommendations of the Natural Resources Commission’s review of weed management in its Final Report (May 2014) and will soon introduce the new Biosecurity Act 2015 to replace the Noxious Weeds Act 1993. Many of the issues raised by councils have been addressed following this review, with the formation of regional weeds committees and compulsory membership of Crown Lands on these committees to increase communication. Regional committees will be tenure neutral under the new arrangements and weed control actions will be common across the entire LLS region.

Conclusion

Whilst local government will remain the local control authority for weeds management, inclusion of public land managers on the new regional weeds committees and the tenure neutral approach to weed management in the new Biosecurity Act 2015 should address many of the issues raised by councils.
### 11. Noxious Weeds – duplicative reporting requirements

Councils must keep a record of noxious weeds and report on its implementation of their local noxious weeds program.

#### Stakeholders’ description of burden and proposed solutions

Stakeholders submitted that reporting requirements are duplicative, for example requirements for quarterly regional reports, annual regional reports, State of the Environment reports, inspections and reinspections, issuing notices with follow-up compliance and reporting new incursions of notifiable weeds.

The solutions proposed include:
- a more effective DPI website for reporting of notifiable weeds to improve and streamline the process, and
- a centralised registry for recording of incidents in "real time" to diminish the need for individual annual reports.

#### IPART analysis

DPI advised that:
- Councils are recipients of grant funds. These grants are not compulsory and reporting on the projects is very streamlined.
- Local Control Authorities will always have a requirement to report notifiable weeds and this is costed into their regional projects. This reporting is infrequent and is not considered onerous.
- It maintains a website for this information.

Additionally, DPI has recently developed a new Biosecurity Information System. This will provide capacity for real time tracking and recording of data, access to information and minimise duplication across all LCAs.

### Conclusion

The NSW Biosecurity Information System currently being implemented will provide a statewide system for tracking and recording noxious weeds, and will streamline the reporting of noxious weeds.

### 12. Noxious Weeds – conflicting legislative priorities

#### Stakeholders’ description of burden and proposed solutions

Stakeholders submitted that there are conflicts between the objectives of the Noxious Weeds Act 1993 and other legislation that make it difficult to implement. For example, the POEO Act licensing requirements for application of herbicides on or over water hinder the implementation of the Noxious Weeds Act to control aquatic weeds. The prohibition of clearing under the Native Vegetation Act may be problematic when clearing is the only way to control a noxious weed.

#### IPART analysis

The DPI noted that this is a common misunderstanding which has been addressed in the preparation of the Biosecurity Act 2015.

### Conclusion

Perceived conflicts between the objectives of the Noxious Weeds Act 1993 and other legislation have been addressed in the Biosecurity Act 2015 which was assented to in September 2015 and is expected to come into effect in 2017.
Table B.9 Community Order

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<thead>
<tr>
<th>1. Graffiti Control – register</th>
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<tbody>
<tr>
<td>The Graffiti Control Act 2008 provides that councils may remove graffiti that is visible from a public place. Councils must keep a register of such graffiti removal work that specifies the owner/occupier of the premises, the nature of the work, the cost of the work, and the amount charged by the council for carrying out the work.</td>
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**Stakeholders’ description of burden and proposed solutions**

Tenterfield Shire Council submitted that the graffiti control register has a low level of benefit and proposed that the requirement for maintaining the register should be removed.

**IPART analysis**

The Department of Justice advised that the requirement to maintain a register is intended to help councils:
- maintain records to identify graffiti trends, and
- establish appropriate costs for graffiti removal that is often contracted out (eg, to organisations such as Rotary).

We consider that the requirement is reasonable.

**Conclusion**

The requirement for councils to maintain a graffiti control register under the *Graffiti Control Act 2008* imposes minimal and reasonable record keeping requirements related only to council removal of graffiti that is visible from a public place. These records can assist councils identify graffiti trends, establish appropriate costs for graffiti removal work and provide transparency for property owners that are liable to pay the council’s costs.
### 1. Boarding Houses

Councils have responsibility for inspecting and enforcing registration requirements for registered boarding houses under the Boarding Houses Act 2012 (BH Act). They must conduct an initial inspection to assess compliance with planning, building and safety requirements and accommodation standards. They can issue penalty notices for registration breaches and orders to rectify the premises to meet the standards. They can charge a fee for conducting the inspection.

As of 30 November 2015, there were 922 boarding houses on the NSW Fair Trading Register, in 70 different council areas. The concentration is greatest in the 38 LGAs of Greater Metropolitan Sydney, which have about 758 premises in total. About 33 councils have only one or two premises each.

#### Stakeholders’ description of burden and proposed solutions

Issues identified with council obligations under the Act, include:
- lack of clarity about council functions and other agencies’ responsibilities, and how these functions relate to those arising under other legislation that regulates health and safety, planning and building
- resource-intensity and lack of full cost recovery for inspections, and
- practical difficulties with enforcement such as getting access to premises, determining whether premises fall within the Act, and the implications of making an order that will close a boarding house.

#### IPART analysis

NSW Fair Trading advised that:
- Council obligations under this Act are confined to the initial inspection of a registrable boarding house. A regular inspection program is not necessary.
- The Department of Family and Community Services enforces the applicable standards of care where premises have residents with ‘additional needs’ (i.e., ‘assisted’ boarding houses).
- Councils also have regulatory functions over boarding houses under various other statutes, eg, planning (development consents), food and workplace safety, and public health. These also apply to similar premises not covered by the Act such as backpacker hostels or residential care facilities.
- Councils’ responsibilities have been explained in the *Boarding Houses Act 2012 Guide for Councils* (June 2013), fact sheets issued by Fair Trading, and workshops provided by Family and Community Services when the Act commenced.
- NSW Fair Trading recognises some inherent practical difficulties with enforcement given the nature of boarding houses, but most are common to councils’ other enforcement activities. It acknowledges that the effectiveness of the powers of entry and inspection specified in the Act could be reassessed when the Act has been operating for a longer time.
- Other enforcement and penalty notice problems identified by councils, resourcing to carry out their functions and cost recovery are systemic issues, common to other council responsibilities. These are discussed in Chapter 5.

#### Conclusion

The 5-year review of the *Boarding Houses Act 2012* in 2017 will be an opportunity to address practical difficulties that have arisen.

In the interim, regular review of the guidance given to councils by NSW Fair Trading and Department of Family and Community Services can incorporate clarification of councils’ responsibilities as necessary.
2. Gravel pits subject to mine safety regulation

The Work Health and Safety (Mines) Act 2013 and the Work Health and Safety (Mines) Regulation 2014 (the WHS (Mines) laws), which commenced on 1 February 2015 apply to all mining operations in NSW, including council-operated small-scale gravel pits. They require the operator of each site to appoint a Mine Operator and suitably qualified Quarry Manager, have a WHS safety management system and report quarterly on work, health and safety for each quarter.

Stakeholders’ description of burden and proposed solutions

Stakeholders submitted that there are an estimated 800 quarries operated by about 100 councils across NSW to supply gravel for road maintenance and renewal. In regional and remote areas many councils operate non-commercial, low output, low-cost, infrequently used gravel pits for road building. In relation to these small-scale gravel pits, affected councils contend that:

- the obligations are unnecessary, onerous, costly and disproportionate
- general workplace safety laws applying to all council activities provide adequate safeguards to these low-risk activities, and
- clarification of whether council-operated quarries are exempt under s 11(c) of the Work Health and Safety (Mines) Act 2013 is a priority, or alternatively, quarries with low output used only for council civil projects (eg, 5,000 tonnes per annum) should be exempt.

IPART analysis

- The Department of Industry, Division of Resources & Energy, Mine Safety advises that the WHS (Mines) laws:
  - are based on national model WHS mining regulations which provide for harmonised laws across Australia
  - replace laws that also covered council quarries, and retain obligations for safety management plans, qualified managers and quarterly reporting of workplace injuries
  - fit within the overall work health and safety framework and impose additional requirements to deal with mining-specific risks
  - introduce more flexibility, eg, in how the safety management system is documented, less frequent reporting for work health and safety (eg, annually), permitting one person to perform the role of quarry manager for a group of mines, and
  - have supporting codes of practice and guidelines which are not mandatory but were developed to assist understanding of obligations under the WHS (Mines) laws.

- Although some requirements in the new WHS (Mines) laws appear to be more prescriptive than the provisions they replaced, and excessive for small-scale gravel pits, the flexibility noted should mitigate the perceived burden somewhat.

- In these circumstances, further guidance, as foreshadowed by the Mine Safety Unit, would assist councils in managing their risks and efficiently complying with their obligations as quarry operators.

Conclusion

IPART supports the Department of Industry, Division of Resources & Energy, Mine Safety proposal to develop relevant guidance for councils with small-scale gravel pits to meet their obligations under the Work Health and Safety (Mines) Act 2013.
3. Swimming pool regulation – private pools
Amendments to the Swimming Pools Act 1992 in 2012 made councils responsible for inspecting and issuing a swimming pool compliance certificate to accompany sale or lease of a residential property.

Stakeholders’ description of burden and proposed solutions
Councils’ concerns include:
- delays and uncertainty in implementing the new regime have created administrative and financial burdens
- councils’ perceived liability from responsibility for inspection leads to high standards being set and higher compliance costs
- central register deficiencies cause councils to maintain parallel registers to record all necessary data for their own purposes
- inspection regime is resource-intensive, costly (including travel costs in regional areas), and onerous with over-prescriptive mandatory requirements
- for councils where there are many pools (one has 18,000) the demands are great
- the demand for inspections cannot be predicted, so programming is problematic
- fee structure precludes full cost recovery
- powers of entry that are unduly complex and hard to use
- dual responsibility (both private and council certifiers) is inefficient and lacks clarity when enforcement is needed.

IPART analysis
- Commencement of the 2012 amendments has been delayed twice. They are now due to start on 29 April 2016.
- The Government commissioned Michael Lambert to review the regulatory framework for swimming pools, and report on whether the 2012 amendments are adequate or should be changed before they commence. This report was due to the Government in December 2015.
  - The Lambert Review Discussion Paper indicates that many of the concerns identified by councils will be addressed. It suggests that a cost-benefit analysis be undertaken on the 2012 amendments.
  - The report is expected to deal with the compliance burdens noted above.
- When it receives the Lambert Report, the Government will determine whether to again defer commencement until it considers the report’s recommendations, or go ahead with the existing framework on 29 April and make any necessary changes at a later date.
- In response to councils’ concerns about the regulatory burden imposed on them by the 2012 amendments, IPART’s Local government compliance and enforcement – Draft Report recommended a review of the Act within five years with a cost-benefit analysis, as well as greater assistance to councils in undertaking their inspection functions.

Conclusion
The Lambert review of swimming pool regulation is considering the compliance burdens raised by councils. IPART will consider and consult on this report before making any recommendations on this issue.
4. Public Health Act 2010 regulation of public swimming pools, cooling towers and skin penetration premises

The Public Health Act 2010 (PH Act) requires councils to determine “appropriate measures” to ensure compliance with the Act on public swimming pools, cooling towers and skin penetration premises. Councils must maintain a register of notifications for each type of premises and are responsible for enforcement, issuing improvement notices, prohibition orders and penalty notices. They can charge fees for notifications and when issuing improvement notices and prohibition orders. Councils must appoint officers (known as Environmental Health Officers (EHOs)) to inspect and regulate these premises, and must submit annual returns to NSW Health about some enforcement activities.

Stakeholders' description of burden and proposed solutions

The regulatory framework applying to cooling towers (legionella control), skin penetration premises (infection control in, eg, tattoo parlours, beauticians’ premises) and public swimming pools (water quality only) is similar. Comments from councils have been considered to apply equally to all these premises.

- Inspections are resource-intensive, in particular where there are large numbers of premises to regulate and employees require specialist skills.
- It is unnecessarily duplicative for councils and NSW Health to keep registers of premises.
- Annual activity reporting can be onerous given the number of pools and regulated premises, with no apparent benefit to councils.
  - Usefulness is questioned given that only improvement notices or orders are reported, not number of inspections or other compliance activities.
- More resources, streamlined reporting requirements and centralised registration were proposed to reduce the burdens.
- The PH Act strengthened the enforcement provisions and increased the burden on local government for ensuring compliance with them, along with higher fees. NSW Health, as required by the Act, provided guidance and support to councils, but no commensurate funding or resourcing to undertake the inspections.
  - The obligations are warranted but have been handed to Local Government without commensurate funding or resourcing for inspections, staffing, training or equipment.
  - Fees do not permit full cost recovery.

IPART analysis

- The PH Act enhanced the significant compliance role for councils. It can be resource-intensive, but the new Act introduced flexibility and gave councils some control over resourcing. Section 4 allows councils to adopt “appropriate measures” to ensure compliance, ie the inspection program is at councils’ discretion.
- Regulated fees and cost recovery are systemic issues, dealt with in Chapter 5 of this report.
- NSW Health considers that replacing registers maintained by each council with a centralised database is neither necessary nor practical under the current regulatory model. It could impose greater administrative burdens on councils and may not be cost-effective.
- Options to streamline annual reporting are available by:
  - clarifying in the guidelines for councils that they only have to report when there has been notifiable activity (ie, no need for NIL returns), and
  - allowing councils to comply with their annual reporting obligation by reporting notifiable activities as they occur.
Conclusion

Streamlining annual activity reporting requirements by providing for councils to report only notifiable activities only as they occur, rather than annually, should reduce the reporting burden without compromising public health outcomes and NSW Health’s monitoring of councils’ enforcement activities.

5. Food Safety – compliance activity and reporting

Every NSW council is an enforcement agency under the Food Act 2003. They are responsible for enforcing food safety and labelling standards, including conducting inspections of retail food businesses. They must submit an annual return (in July) covering the year’s inspection and enforcement activities.

Stakeholders’ description of burden and proposed solutions

Stakeholders submitted that:

- Compliance with annual reporting requirements is considered a burden, and the value to councils and the Food Authority is questioned. Examples include:
  - the need to adjust reports to reflect changes to the reporting model and to the information sought
  - having to compile reports on inspection activity throughout the year to submit in an end-of-year report
  - the need to report information in addition to inspection activity
  - it appears that limited use is made of the data reported
  - the need for annual inspections of all high and medium risk food businesses operators.
- Establishing which is the Appropriate Regulatory Authority (ARA) for home businesses and retail businesses with a manufacturing component can result in duplication of compliance activity by councils and the Food Authority.
- Fees do not permit full cost recovery. This is a systemic issue, dealt with in Chapter 5.

IPART analysis

The Food Authority is implementing and/or investigating a range of new practices to address some specific issues raised by councils such as:

- adopting a 2-year lead time before changes to data collection become mandatory
- requesting all councils to use a standardised inspection checklist (NSW Food Premises Assessment Report) from July 2015
- investigating options for councils to automate the submission of inspection reports
- considering how to incorporate less frequent inspections for lower risk businesses into the current framework, and
- providing guidance for councils on determining the right ARA.

Annual reporting is useful to the Food Authority for monitoring inspection and compliance activity, capacity-building for EHOs and benchmarking. It is useful to councils for resource and program planning.

Conclusion

The NSW Food Authority is responding to councils’ concerns with options to streamline procedures for both compliance and reporting. Continuing this approach, the Food Authority is working with councils to rigorously assess the need for each type of data councils must report. It is striving to adopt technologically innovative ways of collecting it, and a more targeted approach to inspections. The outcomes of this process should minimise the burden on councils in this area.
6. Mobile food vendors
Local councils are generally responsible for food safety surveillance of mobile food vending vehicles under the Food Act 2003. They can charge fees for inspections. Each council can determine the approvals such businesses must obtain before they can operate in the LGA (eg, under section 68 of the Local Government Act 1993.

Stakeholders’ description of burden and proposed solutions
Stakeholders argued that requiring each council where a mobile food vendor operates to inspect and approve the business involves unnecessary duplication of compliance activity.

IPART analysis
- IPART has previously examined this issue in the Local government compliance and enforcement - Draft Report.
- The NSW Food Authority’s Guidelines for Mobile Food Vending Vehicles encourages mutual recognition of inspections of mobile food vendors by councils (the Home Jurisdiction Rule) for inspections and the imposition of fees and charges. Under mutual recognition:
  - The council where the vehicle is ordinarily garaged is the primary enforcement agency, responsible for initial inspection, on-going compliance, and ordinary fees and charges for inspections.
  - Other councils where the vehicle trades are entitled to ask the vehicle operator for a copy of the most recent inspection report (less than 12 months old). If the report is satisfactory (ie, only minor issues identified), the council EHO should not conduct a further inspection, unless there is a perceived risk to food safety and public health.
- In the Local government compliance and enforcement - Draft Report, IPART recommended that all councils should adopt these guidelines in order to reduce red tape for business.
- The Food Authority is currently investigating other options to streamline the processes for regulating mobile food vendors, including electronic registration and approval.
- The requirement for councils to approve mobile food vendors to operate on community land and/or public roads under section 68 of the Local Government Act 1993 is considered in Chapter 8 of this report.

Conclusion
The mutual recognition approach proposed in the NSW Food Authority’s Guidelines for Mobile Food Vending Vehicles is an effective means of reducing the compliance burden on councils in respect of mobile food vendors, and should be adopted by all councils.

7. Rural Fire Service – council responsibilities and funding
The Rural Fires Act 1997 makes councils the Responsible Authority for rural fires districts, and lists numerous functions related to the operation and administration of Rural Fire Brigades. Since 2000, most of councils’ statutory functions have, by agreement, been conferred upon the NSW RFS Commissioner. Unless otherwise prescribed in a service agreement, local government’s main role is to maintain plant, equipment and buildings.

Stakeholders’ description of burden and proposed solutions
Notwithstanding their reduced roles, councils identified concerns with reporting, resourcing, and unclear responsibilities.
- The processes for bidding for funds and their allocation, and reimbursement of expenses after the work is done are extremely cumbersome, over-complicated, and not consistently applied.
- Councils’ responsibilities under the Rural Fires Act 1997 are costly to administer and councils are unable to fully recover costs.
- The Bush Fire Risk Information Management System (BRIMS) is poorly designed and time consuming to use.
IPART analysis

- The Rural Fire Service (RFS) maintains that since 2000, compliance burdens on councils have been mitigated through Rural Fire District Service Agreements which confer the responsibilities of local government set out in the Rural Fires Act 1997 to the NSW RFS Commissioner. Councils no longer employ fire-fighting staff, their operational role is limited and financial management is principally conducted by RFS.
- Equipment (plant and buildings) is vested to councils, which in turn, have access to the Rural Fire Fighting Fund (RFFF) to assist in the costs of maintaining them. RFS requires reports of work undertaken to facilitate payment as expected by financial governance practices as required of all NSW Government agencies.
- RFS acknowledges the processes for allocating and reimbursing funds is can be improved and is investigating options to streamline them.
- RFS is in the process of replacing BRIMS with Guardian, which will provide a comprehensive reporting capability with the potential to integrate RFS with partner agencies, including councils.

Conclusion

RFS acknowledges that allocation and reimbursement of funds to councils through the RFFF is complicated, and intends to streamline the existing processes. RFS will continue to consult with councils to ensure that processes are efficient and maintain the necessary integrity.

Source: Various submissions and questionnaires to IPART.
C Out of Scope Issues

Table C.1 Out of Scope issues

<table>
<thead>
<tr>
<th>1. Council as provider of last resort</th>
<th>Stakeholders’ description of burden</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Local Government often has to step in to provide services because the State is not making them available/accessible and the private sector won’t otherwise provide (eg, doctors, vets, housing for doctors, etc).</td>
</tr>
<tr>
<td></td>
<td>- The State should provide funding for these services.</td>
</tr>
</tbody>
</table>

**IPART Comment**

This is particularly an issue in remote rural areas where the council is the only government interface with the community. However, the role of councils in small regional communities is a wider policy issue than this review has been asked to address.

<table>
<thead>
<tr>
<th>2. Government Information (Public Access) Act 2009 reporting and compliance</th>
<th>Stakeholders’ description of burden</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- GIPA fees do not always reflect cost.</td>
</tr>
<tr>
<td></td>
<td>- Consultation with councils suggests that compliance activities under the GIPA Act are perceived as sizable and increasing.</td>
</tr>
</tbody>
</table>

**IPART comment**

The issues of fees, GIPA compliance burdens and limits on the length of time passed for GIPA requests are burdens that occur generally across all State and Local Government. As these issues apply beyond local government, they have been treated as out of scope. Recommendations relating to Local Government specific GIPA related burdens have been made in Chapter 8 of this report.
3. Borrowing Return

**Stakeholders’ description of burden**

- The Borrowing Return is a duplication of reporting of borrowing activities in the Operational Plan, IP&R documents and financial reports.
- There are other controls in place such as borrowings being reported to the elected Council for adoption and made publicly available online.

**IPART comment**

OLG collects this information as part of an intergovernmental agreement (Uniform Presentation Agreement) established at the May 1991 Premiers’ Conference. The Uniform Presentation Framework presents common financial information across Commonwealth, State and Territory governments.

Removing Borrowing Return information from IP&R and related documents would significantly reduce the value of these critical documents.

The requirement for this return applies to the whole of the NSW Government, and is required for a reporting framework that applies to all governments in Australia. For this reason, this topic is treated as out of scope.

4. Equal Employment Opportunity (EEO) management plan and reporting

**Stakeholders’ description of burden**

- Councils must prepare and publish an EEO Management Plan Under s 345 of the LG Act. They must also report on implementation of the plan in their annual report.
- EEO is well provided for in employment law and it is difficult to see the justification for LG being prescribed a more particular approach to EEO planning.

**IPART comment**

The *Anti-discrimination Act 1977* applies to all workplaces, however most government departments are required to also prepare and publish an EEO Management plan. Section 345 of the Act is consistent with requirements across government.

This topic is treated as out of scope as the requirement for councils to produce and publish an EEO management plan is consistent with requirements across NSW Government and is not specific to local government.

5. Retraining of traffic control services

**Stakeholders’ description of burden**

- Traffic control services are subject to ongoing retraining requirements.
- Some stakeholders argued that the frequency and need for this retraining and associated record keeping requirements are excessive and onerous.

**IPART comment**

Retraining of traffic control services is outside the scope of this review as it is not specific to local government. These requirements apply to all traffic control services, irrespective of who provides them, including private traffic control service businesses and Roads and Maritime Services traffic control services.
6. Parking on nature strips in new estates with narrow roads

Stakeholders’ description of burden

- Traffic flow in new estates with narrow roads is a problem encountered by some councils.
- One stakeholder argued that partial parking on nature strips should be allowed to alleviate traffic flow issues.

IPART comment

Roads and Maritime Services (RMS) advises that parking on nature strips is not allowed under nationally harmonised road rules and it supports this position. RMS notes that parking on nature strips raises a range of issues: safety for drivers leaving driveways (having their vision obscured); dangers and hazards for pedestrians and subsequent issues for councils regarding safety, liability, property damage and enforcement; damage to utility covers; and problems with rutting forming trip hazards for pedestrians.

We consider there is no burden imposed on councils by the State in this area.

7. Parking space levy

Stakeholders’ description of burden

- One stakeholder argued that the calculation and reporting requirements associated with the parking space levy are excessive and onerous.

IPART comment

The parking space levy is one of a number of NSW Government strategies to discourage car use in major commercial centres, encourage the use of public transport and improve air quality. The levy applies in Sydney’s CBD, North Sydney/Milsons Point, Bondi Junction, Chatswood, Parramatta and St Leonards. The parking space levy is outside the scope of this review as it also applies to private car park operators, and is not specific to councils.

8. Fluoridation of drinking water

Stakeholders’ description of burden

- Fluoridation of drinking water by Local Water Utilities (LWUs) is optional but some stakeholders argue that it should be mandatory.
- These stakeholders consider that not having a mandatory requirement to fluoridate drinking water supply creates burdens for councils in the form of unnecessary community consultation and tension within communities for councils to resolve.

IPART comment

NSW Health advised that roughly 75% of LWUs fluoridate their drinking water supply, with some of the remaining LWUs working towards fluoridation. In 2013, the NSW Government confirmed its policy of leaving the decision to fluoridate water supply up to each community and providing funding to support the construction of fluoridation plants and associated capital works as an incentive for councils which have not yet agreed to fluoridate their water supplies.

9. Dual water and sewerage regulatory regime for Wyong and Gosford councils

Stakeholders’ description of burden

- The water and sewerage businesses of Wyong and Gosford councils are regulated under the Water Management Act 2000 and the Local Government Act 1993.
- Wyong Shire Council considers that this has created a dual, and at times conflicting, regulatory regime that is inefficient and ineffective. It argues that these water businesses should be regulated under the Local Government Act 1993 only.
### IPART Comment

DPI Water agrees that the regulatory requirements for the water and sewerage businesses of Wyong and Gosford councils should be streamlined to remove the dual requirements. How this will be done is a policy matter for Government.

### 10. Keeping or feeding of birds on private property

#### Stakeholders’ description of the burden
- Legislation is not clear on what powers councils have to deal with issues relating to keeping chickens, roosters or feeding of birds (eg, pigeons) on private property.

#### IPART comment
- Issues arise if the keeping or feeding of birds is creating a nuisance to neighbours eg, crowing rooster or large number of pigeons feeding and creating mess.
- Councils have a number of orders powers under the *Local Government Act 1993* (LG Act) that could be used to deal with issues relating to the keeping or feeding of birds on private premises.
- Order no 18. under section 124 of the LG Act can be used to prevent the occupier of premises from keeping birds of an inappropriate kind (eg, roosters) or in inappropriate numbers or in an inappropriate manner (eg, chickens).
- Section 125 can be used to abate a public nuisance or order a person responsible for a public nuisance to abate it. A *Nuisance* consists of interference with the enjoyment of public or private rights in a variety of ways. A nuisance is ‘public’ if it materially affects the reasonable comfort and convenience of a sufficient class of people to constitute the public or a section of the public. This could be used to deal with feeding pigeons creating a nuisance to neighbours.
- OLG could consider whether more specific orders, or more broadly available order powers, to deal with this issue would be appropriate as part of the anticipated re-make of the Local Government Act.
- However, this was not a widely reported issue and was only raised at the Sydney workshop.

### 11. Pollution incident reporting

Required under the *Protection of the Environment Operations Act 1997*

#### Stakeholders’ description of burden
Stakeholders submitted that:
- the immediate reporting requirement unnecessarily ties up valuable resources and delays response to the incident, and
- the reporting around major incidents eg, deserted house with asbestos burning down, is onerous.

#### IPART Comment
The EPA considers that immediate notification is necessary to ensure appropriate responses to pollution incidents to protect the environment and human health. The duty to immediately notify all relevant authorities of pollution incidents, as required under s148 of the *Protection of the Environment Operations Act 1997*, applies to the whole NSW community, and is not specific to local government.
### 12. Pollution Incident Response Management Plan (PIRMP)

**Stakeholders’ description of burden**

Tenterfield Shire Council submitted that this requirement is onerous:
- particularly, with multiple EPA licences covering the same works crews
- where the same staff operate across each site (e.g., in a small council)
- as gathering formation for reporting impacts on time for operational and planning tasks.

**IPART Comment**

Pollution Incident Response Management Plans are required for all premises that hold an environment protection licence (Part 5.7A of the *Protection of the Environment Operations Act 1997*). Therefore, the requirement is not specific to local government.

### 13. Environment Protection Licence – annual return

**Stakeholders’ description of burden**

Lake Macquarie Council considers that the notification process is outdated and cumbersome. An annual review of the licence generates an excessive workload.

**IPART Comment**

Section 66(3) of the POEO Act allows a licence condition to require an annual return. In practice, an annual return is required to be submitted to the EPA in relation to every licence. All holders of environment protection licences are required to certify the extent to which the conditions of their licences have been complied with through submission of an annual return. Therefore, the requirement is not specific to local government.

### 14. Waste Levy – materials liable for the waste levy

**Stakeholders’ description of burden**

Councils queried the need to pay a levy on items which cannot be recycled or reused, e.g., contaminated soils, asbestos, and treated timber. Councils also have to pay the waste levy on material imported to the waste depot for operational reasons, like clay for daily landfill cover, clay for external cell walls, gravel for internal haul roads, and capping materials for completed cells. They considered the component of the levy applicable to operational use materials should be removed.

The EPA considered that complete removal of the levy for asbestos could undermine the overall integrity of the levy. A recent trial involving waiving the levy in certain circumstances has been undertaken. An evaluation of this program will be available in the near future. The *Protection of the Environment Operations (Waste) Regulation 2014* already allows councils to apply for levy deductions for material received for operational purposes.

**IPART Comment**

The payment of the waste levy is not specific to local government.
The tables below list the stakeholders involved in consultation on this review to date.

**Table D.1 Submissions on Issues Paper**

<table>
<thead>
<tr>
<th>Councils and council organisations</th>
<th>NSW Government agencies</th>
<th>Organisations</th>
<th>Individuals</th>
</tr>
</thead>
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<tr>
<td>Albury City Council</td>
<td>Randwick City Council</td>
<td>Housing Industry Association</td>
<td>P Gardiner</td>
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<td>Bega Valley Shire Council</td>
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<td>Institute of Public Works Engineering</td>
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<td>Blacktown City Council</td>
<td>Southern Sydney Regional Organisation of Councils</td>
<td>Australasia, NSW Division</td>
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<td>Centroc – Central NSW Council</td>
<td>Tamworth Regional Council</td>
<td>The Real Estate Institute of NSW</td>
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<tr>
<td>City of Canada Bay Council</td>
<td>Tenterfield Shire Council</td>
<td>Urban Taskforce Australia</td>
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<td>Cootamundra Shire Council</td>
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<td>Water Directorate</td>
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<td>Ku-ring-gai Council</td>
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<td>Kyogle Council (Confidential)</td>
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<td>Maitland City Council</td>
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<td>Narromine Shire Council (Confidential)</td>
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<td>Queanbeyan City Council</td>
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### Table D.2  Councils responding to IPART’s questionnaire

<table>
<thead>
<tr>
<th>Council Name</th>
<th>Council Name</th>
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<tbody>
<tr>
<td>Bega Valley Shire Council</td>
<td>Maitland City Council</td>
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<td>Newcastle City Council</td>
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<td>City of Canada Bay Council</td>
<td>Pittwater Council</td>
</tr>
<tr>
<td>Coffs Harbour City Council</td>
<td>Port Macquarie-Hastings Council</td>
</tr>
<tr>
<td>Council of the City of Sydney</td>
<td>Port Stephens Council</td>
</tr>
<tr>
<td>Eurobodalla Shire Council</td>
<td>Rockdale City Council</td>
</tr>
<tr>
<td>Fairfield City Council</td>
<td>Shoalhaven City Council</td>
</tr>
<tr>
<td>Great Lakes Council</td>
<td>Snowy River Shire Council</td>
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<td>Greater Taree City Council</td>
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</tr>
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<td>Griffith City Council</td>
<td>Temora Shire Council</td>
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<td>Gwydir Shire Council</td>
<td>Tenterfield Shire Council</td>
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<td>Holroyd City Council</td>
<td>The Council of the Municipality of Kiama</td>
</tr>
<tr>
<td>Ku-ring-gai Council</td>
<td>The Hills Shire Council</td>
</tr>
<tr>
<td>Kyogle Council</td>
<td>Upper Lachlan Shire Council</td>
</tr>
<tr>
<td>Lake Macquarie City Council</td>
<td>Wagga Wagga City Council</td>
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<tr>
<td>Leeton Shire Council</td>
<td>Warringah Council</td>
</tr>
<tr>
<td>Leichhardt Municipal Council</td>
<td>Warrumbungle Shire Council</td>
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<tr>
<td>Lismore City Council</td>
<td>Wollondilly Shire Council</td>
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<td>Liverpool City Council</td>
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</table>
Table D.3  Councils attending the workshops

<table>
<thead>
<tr>
<th>Coffs Harbour workshop, 10 September 2015</th>
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<tbody>
<tr>
<td>Armidale Dumaresq Council</td>
<td>Nambucca Shire Council</td>
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<td>MidCoast County Council</td>
<td>Tenterfield Shire Council</td>
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<td></td>
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<td>Wagga Wagga workshop, 15 September 2015</td>
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<tr>
<td>Lachlan Shire Council</td>
<td>Tumbarumba Shire Council</td>
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<td>Snowy River Shire Council</td>
<td>Wakool Shire Council</td>
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<td>Gundagai Shire Council</td>
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<td></td>
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<td>Dubbo workshop, 16 September 2015</td>
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<tr>
<td>Brewarrina Shire Council</td>
<td>Gilgandra Shire Council</td>
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<td>Cabonne Council</td>
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<td>Dubbo City Council</td>
<td>Warrumbungle Shire Council</td>
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<td>Sydney workshop, 8 October 2015</td>
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<td>Bega Valley Shire Council</td>
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<td>Wyong Shire Council</td>
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<tr>
<td>North Sydney Council</td>
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</tbody>
</table>

Note: Local Government NSW was represented at every workshop.
### Table D.4   NSW Government Agencies consulted

<table>
<thead>
<tr>
<th>Building Professionals Board</th>
<th>NSW Geographical Names Board</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cemeteries and Crematoria NSW</td>
<td>NSW Ministry of Health</td>
</tr>
<tr>
<td>Department of Family and Community Services</td>
<td>NSW Food Authority</td>
</tr>
<tr>
<td>Department of Justice</td>
<td>NSW Fair Trading</td>
</tr>
<tr>
<td>Department of Planning and Environment</td>
<td>NSW Industrial Relations</td>
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<tr>
<td>Department of Premier and Cabinet</td>
<td>NSW Office of Water</td>
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<tr>
<td>Department of Primary Industries</td>
<td>NSW Ombudsman</td>
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<tr>
<td>Environment Protection Authority</td>
<td>Office of Environment and Heritage</td>
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<tr>
<td>Fire &amp; Rescue NSW</td>
<td>Office of Local Government</td>
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<tr>
<td>Heritage Council of NSW</td>
<td>Division of Resources &amp; Energy, Mine Safety</td>
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<tr>
<td>Information and Privacy Commission NSW</td>
<td>Roads and Maritime Services</td>
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<tr>
<td>Land and Property Information</td>
<td>Rural Fire Service, NSW</td>
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<td>Office of Liquor, Gaming and Racing</td>
<td>Sport and Recreation</td>
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<td>Long Service Corporation</td>
<td>State Library of NSW</td>
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<td>Western Sydney Parklands Trust</td>
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<tr>
<td>NSW Department of Industry, Skills and Regional Development</td>
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