IPART
New South Wales

Independent Pricing and Regulatory Tribunal

Review of reporting and compliance burdens on Local Government

Local Government — Final Report
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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 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 recommendations to address issues in the areas of planning, administration and governance, as well as some systemic issues, 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 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.

In the area of administration and governance, stakeholders identified financial reporting, tendering and procurement requirements and obligations under the *Government Information (Public Access) Act 2009* (GIPA Act), as imposing excessive reporting and compliance burdens. Our recommendations would address these burdens by removing duplicative requirements, streamlining tendering and procurement processes and recognising the particular impact on councils of complying with the GIPA Act and Regulation.

Stakeholders identified the way the State devolves regulatory responsibilities to local government and the cumulative impact of these responsibilities, regulated fees, and multiple reporting requirements, as systemic burdens. Our recommendations to address these systemic issues would lead to significant benefits across all council function areas by reducing cost shifting, enabling better cost recovery, managing the growth of regulatory requirements on councils and avoiding duplicative reporting requirements.

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 consideration by the State of the impact of regulatory proposals on councils is a key aspect of the partnership between State and local government and is 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 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
- 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', Data NSW and the Information Asset Register, and a proposed central portal for local government reporting and data collection.

Our recommendations for regulated fees charged by councils would allow councils to recover the efficient costs of these services, lessening the financial impact on councils.

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1 *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships*, signed on 8 April 2013. This agreement expired on 30 June 2015.

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 takes risk-based approaches to reduce the burdens identified by stakeholders. An example is with council grant 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 devolves 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 the area of Crown reserve reporting and management, our 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.

In some functional areas the State needs to provide greater support to councils. For example, we are recommending the Department of Planning and Environment (DPE) implement a 'one-stop shop' to manage State agency referrals, concurrences and approvals in relation to planning proposals, development applications and integrated development assessment to reduce the costly delays experienced by councils and applicants.

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 with 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 standards and portals to provide access across government and minimise the incidence of duplicative reporting and data collection.

Elements of the existing NSW Government's Information Management Framework[2] can be used to help State agencies achieve these outcomes. We recommend that State agencies use the existing Data NSW and Information Asset Register, as well as our recommended central portal for local government reporting, to utilise the information that is already available. State agencies should use the available information instead of separately requesting the same or similar information. State agencies would be required to consult these registers and repositories when developing new or amended reporting requirements to prevent excessive or duplicative requirements being imposed.

We also make specific 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.

2 See section 5.5.2.

- 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)[3]
- 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),[4] and
- local government compliance and enforcement to reduce unnecessary regulatory burdens placed on businesses and the community by councils – undertaken by IPART.[5]

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.[6]

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

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3 Independent Local Government Review Panel, *Revitalising Local Government*, October 2013, at http://www.localgovernmentreview.nsw.gov.au/, accessed on 1 December 2015 (ILGRP Final Report).

4 Local Government Acts Taskforce, *A New Local Government Act for NSW and Review of the City of Sydney Act 1988*, October 2013, at http://www.olg.nsw.gov.au/sites/default/files/New-Local-Government-final-report.pdf accessed on 1 December 2015 (LG Acts Taskforce Final Report).

5 IPART, *Local government compliance and enforcement - Draft Report*, October 2013, at http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Local_Government/Local_Government_Compliance_and_Enforcement (IPART Compliance & Enforcement Draft Report).

6 ILGRP Final Report, Recommendation 8.2, p 16.

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.

1.3 How IPART has approached the task

We have focused our 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.

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.

We published a Draft Report in January 2016 which sought feedback on 49 draft recommendations. We also held a Public Hearing in February 2016, with participation from councils, NSW Government agencies, and industry groups.

In response to submissions to the Draft Report and feedback at the Public Hearing, we have revised a number of recommendations between the Draft and Final Reports. We have revised our recommendations for the regulation of the Local Water Utilities (LWUs) and now recommend that DPI Water regulate LWUs on a catchment or regional basis using a whole-of-government, risk-based and outcomes-focused regulatory approach.

We have also made new recommendations to:

- Review the basis on which fees are set for Development Applications (DAs).
- Allow local government access to NSW Government procurement prequalification panels.
- Address the issue of council liability for copyright material in making information about DAs available.

- Provide a mechanism to allow councils to charge for access to DAs which are currently prescribed as open access under Schedule 1 of the *Government Information (Public Access) Regulation 2009.*

  This recommendation addresses an issue we previously considered out of scope, and recognises the particular burden and significant cost to councils of meeting this obligation.
- Provide councils with prior notification of legislative changes affecting planning certificates.

Appendix B includes a number of burdens identified by stakeholders for which we have not made a recommendation.

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

1.4 Costs and benefits of our recommendations

We engaged the Centre for International Economics (the CIE) to undertake a cost-benefit analysis of our recommendations.

The Terms of Reference required us to estimate the savings from reducing duplications in reporting requirements across State Government.[7] Eight of our recommendations specifically address duplicative reporting. Of these, five could be costed.[8] These recommendations are estimated to have net benefits of $93 million over a 10-year period following implementation.

In total, the CIE costed 29 of our recommendations. However, they were unable to cost the remaining 22 recommendations for reasons including insufficient information on the proposed changes, and the outcome of our recommendation being dependent on further review.

As shown in Table 1.1, the CIE estimated our recommendations to have net benefits of around $313 million over 10 years following implementation. This is a conservative estimate as it does not include all our recommendations.

7 See Appendix A for the full Terms of Reference.
8 Recommendations 1, 2, 12, 15 and 24.

Table 1.1 Impact by council function area

Function area	NPV Impact ($m)
Systemic issues	182
Water and sewerage	12
Planning	7
Administration and governance	66
Building and construction	6
Public land and infrastructure	-7
Animal control	45
Community order	3
All recommendations[a]	**313**

a Only 29 of 51 recommendations were costed.

Note: The net present value is over the period covering 10 years after implementation and uses a 7% discount rate. The estimates presented are for the central case. Numbers add to 314 due to rounding.

Source: The CIE.

These estimates are indicative of potential order of magnitude only as they are made using data of varying quality, a high degree of extrapolation of available data, and many assumptions.

Nevertheless, the cost-benefit analysis demonstrates that, overall, our recommendations would be likely to result in significant net benefits over a 10-year period. However, not all recommendations would result in net benefits for all stakeholders.

As shown above, our recommendations in relation to public land and infrastructure are currently estimated to have a net cost. This is because the CIE estimates the costs of developing plans of management for each Crown reserve transferred to local government would exceed the administrative cost savings of not providing annual reports for each reserve. In order to ensure communities would receive a net benefit from these transfers, we have amended our previous draft recommendation[9] so that the transfer of Crown reserves, and any funding arrangements to support a transfer, would be negotiated with councils and subject to their agreement.

9 Now Recommendation 40.

1.5 What does the rest of this Report cover?

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

- **Chapter 2** lists our 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 develop 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 during the review.

2 Listing of Recommendations and Findings

Our recommendations and findings are set out below, along with the page number where each is discussed in the report.

Systemic issues

Recommendations

1 That the Department of Finance, Services and Innovation (DFSI) 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. 38

2 That the NSW Government maintain a *Register of local government reporting, planning and compliance obligations* that should be used by NSW Government agencies in the regulation-making process to manage the volume of regulatory requirements imposed on councils and to avoid creating unnecessary or duplicative requirements. 44

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. 48

4 Where fees continue to be set by statute, that the relevant NSW Government agency reviews the level of the fees every three to five years and amends the relevant legislation to allow these fees to increase annually in line with CPI or an index of fee-related costs. 48

5 That the NSW Government review the basis upon which the fees for Development Applications (DAs) are calculated to:

- better reflect the efficient cost to councils and the NSW Government of processing DAs
- minimise disputes and subsequent adjustments, and
- facilitate online payment of DA fees. 48

6 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. 48

7 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. 53

8 That NSW Government agencies collecting local government data and information make this data discoverable through the Data NSW open data portal or the Information Asset Register maintained by the Department of Finance, Services and Innovation. 56

9 That the Department of Finance, Services and Innovation:

- support NSW Government agencies to use the Open Data Rolling Release Schedule to establish clear timeframes for publishing local government data and information in Data NSW (in machine readable formats)
- support councils to make local government data and information available for discovery through Data NSW or the Information Asset Register, and
- support the Office of Local Government to develop a central portal for local government reporting and streamlined data collection. 56

10 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. 60

Water and Sewerage

Recommendations

11 That the Department of Primary Industries Water (DPI Water) regulate Local Water Utilities (LWUs) on a catchment or regional basis, rather than on an individual LWU basis, using a whole-of-government, risk-based and outcomes-focused regulatory approach. 67

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 NSW Government agencies.
- align trade waste reporting with other performance reporting, on a financial year basis, subject to consultation with LWUs, LGNSW and the Water Directorate. 73

13 That the Office of Local Government determine a standardised service report template to be used by technicians undertaking quarterly servicing of aerated wastewater treatment systems, in consultation with NSW Health and councils. 77

14 That the *Local Government (General) Regulation 2005* be amended to require service reports to be provided to councils using the template determined by the Office of Local Government as a standard condition of approval to operate an aerated wastewater treatment system. 77

Planning

Recommendations

15 That the Department of Planning and Environment (DPE): 88

- 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*. 88

16 That the *Environmental Planning and Assessment Act 1979* be amended to enable information or certificates under section 149(2) of the *Environmental Planning and Assessment Act 1979* to be provided through the NSW Planning Portal.

Prior to this amendment, as part of the Department of Planning and Environment's (DPE) review of the *Environmental Planning and Assessment Regulation 2000*, DPE should:

- review section 149(2) and (5) planning certificates to clarify and simplify the information to be provided, and ensure only information relevant in the conveyancing process is provided in a section 149(2) planning certificate, and
- consider what section 149(2) information should be provided through the Planning Portal and whether that information should be provided in certificate form, having regard to:
  - data quality assurance
  - liability for accuracy of State or council information
  - State and council costs, and
  - mechanisms to recover costs. 100

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(2) and (5) of the *Environmental Planning & Assessment Act 1979*. 100

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
- information or certificates under section 149(2) of the *Environmental Planning & Assessment Act 1979,* and
- joint applications for development approvals and construction certificates. 100

19 That DPE:

- notify councils electronically at least 21 days prior to the commencement of legislative changes that will affect the structure or content of section 149 planning certificates, and
- maintain an up-to-date, publicly available list of all legislative instruments with the potential to affect the structure or content of the certificates. 100

20 That DPE manage referrals to NSW Government agencies through a 'one-stop shop' in relation to:

- planning proposals (LEPs)
- development applications (DAs), and
- integrated development assessments (IDAs). 112

21 That DPE develop suites of standardised development consent conditions and streamline conditions that require consultant reports or subsequent approvals, in consultation with councils, NSW Government agencies and other key stakeholders. 119

Administration and governance

Recommendations

22 That the NSW Government streamline the reporting requirements for the Integrated Planning and Reporting (IP&R) framework in the revised Local Government Act. 125

23 Ahead of the 2020 IP&R cycle, 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. 125

24 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. 132

25 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. 135

26 That section 377(1)(i) of the *Local Government Act 1993* be amended to allow the Council to delegate the acceptance of tenders to General Managers. 135

27 That section 55(3)(g) of the *Local Government Act 1993* be amended to allow local government access to the full range of prequalification panels run by NSW Procurement. 136

28 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 and remove those that are not justified on the basis of corruption prevention, probity or protecting the interests of the State. 140

29 That the Office of Local Government introduce guidelines that specify maximum response times for different categories of Ministerial approvals. 140

30 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. 143

31 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. 148

32 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*. 148

33 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. 150

34 That clauses 15 and 16, schedule 3 of the Environmental Planning and Assessment Amendment Act 2014 (which adds new sub-sections 158(1A) and (4A) to the EP&A Act) be proclaimed in order to allow councils a licence or a warranty to use copyright material for the purposes of the EP&A Act (including making available development applications and related documents which may be subject to copyright). 153

35 That the NSW Government:

- Repeal clause 3, schedule 1 of the *Government Information (Public Access) Regulation 2009*.
- Amend the *Environmental Planning and Assessment Act 1979* (EP&A Act) to require councils to make available information and documents currently prescribed as open access information in clause 3, schedule 1 of the *Government Information (Public Access) Regulation 2009* (DA information) to a person (on request).
- Amend the EP&A Act to allow councils to charge a person making a request the efficient costs of making DA information available (after the 'submission period' under section 79(1) of the EP&A Act has expired).
- Consistent with recommendation 4, review the efficient costs to councils of making DA information available to a person (on request).
- Amend the *Environmental Planning and Assessment Regulation 2000* to set the fees for accessing DA information (after the submission period has closed) at the efficient cost to councils. 153

36 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*. 153

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. 136

Building and construction

Recommendations

37 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. 168

38 That the *Environmental Planning and Assessment Regulation 2000* be amended to clarify what constitutes a 'significant fire safety issue'. 172

39 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. 172

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.
- 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 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. 164

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. 166

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. 168

Public land and infrastructure

Recommendations

40 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, and
- where the transfer is agreed by the council, including where this agreement is conditional on change of land classification. 176

41 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. 176

42 That the NSW Government streamline the statutory process for closing Crown roads, including the arrangements for advertising road closure applications. 181

43 That the NSW Government reduce the backlog of Crown road closure applications to eliminate the current waiting period for applications to be processed. 181

44 That the NSW Government streamline the provisions of the *Local Government Act 1993* relating to plans of management for community land to enable councils to align public notice and consultation with councils' community engagement for Integrated Planning and Reporting purposes. 185

45 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. 188

46 That the *Impounding Act 1993* be amended to treat caravans and trailers (including advertising trailers) in the same way as boat trailers when considering whether they are unattended for the purposes of the Act. 191

Animal control

Recommendations

47 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 (ie, 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. 195

48 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. 195

Community order

Recommendations

49 That the NSW Government, in consultation with councils, 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. 204

50 That the NSW Government provide an efficient process for consultation and decision making on temporary and events-based alcohol restrictions. 204

51 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, and 207
- provide councils with compliance and enforcement powers to support their enforcement role under the Act, similar to those provided under Chapter 7 of the *Protection of the Environment Operations Act 1997*. 207

3 Context

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 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 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

In NSW, councils obtain all their powers and responsibilities under NSW legislation. The system of local government in NSW is principally created through the *Local Government Act 1993*. The State also devolves many functions to councils under other Acts including the *Environmental Planning and Assessment Act 1979*, *Roads Act 1993*, *Protection of the Environment Operations Act 1997*, *Water Management Act 2000*, *Swimming Pools Act 1992* and *Companion Animals Act 1998*.

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 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.[10]

These principles are similar to the ten principles for Australian Government policy makers, outlined in *The Australian Government Guide to Regulation*.[11]

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 to our Issues Paper 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.[12]

Under the Intergovernmental Agreement, there was agreement that before a responsibility (ie, service or function) was devolved to councils, local government should be consulted about its capacity to fulfil that responsibility.[13]

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.[14] We again make this 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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10 Better Regulation Office, *Guide to Better Regulation*, November 2009, at http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_October_2009.pdf, accessed on 1 December 2015 (Better Regulation Guide), p 7.

11 Australian Government, *The Australian Government Guide to Regulation, 2014,* p 2.

12 Local Government NSW submission to IPART Issues Paper, August 2015, p 7; and Ku-ring-gai Council submission to IPART Issues Paper, August 2015, p 2.

13 *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships*, signed on 8 April 2013, clause 5. This agreement expired on 30 June 2015.

14 IPART, *Local government compliance and enforcement - Draft Report*, October 2013, pp 72-74.

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)[15]
- 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),[16] and
- local government compliance and enforcement to reduce unnecessary regulatory burdens placed on businesses and the community by councils – undertaken by IPART.[17]

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.[18]

The Office of Local Government (OLG) is also furthering the work of the ILGRP and LG Acts Taskforce in developing a new Local Government Act, and recently issued *Towards New Local Government Legislation Explanatory Paper: proposed Phase 1 amendments,* as part of this process.[19]

Other recommendations of the ILGRP are currently being pursued by the NSW Government as part of its Fit for the Future reforms, focussing on strengthening councils' abilities to provide the services and infrastructure communities need.[20] 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 Report we only refer to the draft recommendations of our earlier review. This is particularly relevant where we have made recommendations in this review on issues about which we also made recommendations in that review.

15 ILGRP Final Report.
16 LG Acts Taskforce Final Report.
17 IPART, *Local government compliance and enforcement - Draft Report,* October 2013.
18 ILGRP Final Report, Recommendation 8.2, p 16.
19 http://www.fitforthefuture.nsw.gov.au/content/creating-new-legislation accessed on 15 March 2016.
20 http://www.fitforthefuture.nsw.gov.au/ accessed on 9 December 2015.

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.[21]
- *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.[22] The NSW Government accepted all recommendations of the review.[23]
- *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 was due in December 2015.[24]
- *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.[25]
- *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,[26] 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*.[27]

Our 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 recommendations in this Report. These issues are included in Appendix B.

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21 http://www.nrc.nsw.gov.au/publications (review reports) http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0004/528448/nsw-government-response-nrc-report-on-weeds.pdf (NSW Government response) accessed on 6 December 2015.

22 http://www.environment.nsw.gov.au/biodiversitylegislation/review.htm accessed on 6 December 2015.

23 Correspondence from the Office of Environment and Heritage, 2 November 2015.

24 http://www.olg.nsw.gov.au/content/swimming-pool-barrier-review-2015 accessed on 23 March 2016.

25 http://www.lpma.nsw.gov.au/crown_lands/comprehensive_review_of_nsw_crown_land_management

26 http://bpb.nsw.gov.au/building-professionals-act-review accessed on 23 March 2016.

27 https://www.olg.nsw.gov.au/public/dogs-and-cats/companion-animal-taskforce, accessed on 6 December 2015.

4 Method

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.

In developing solutions, we considered 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 assisted in developing draft recommendations and findings, on which we sought feedback at our Public Hearing and through submissions to our Draft Report.

In response to this feedback, recommendations have been maintained, revised, or deleted. For some areas we have made new recommendations.

4.1 The scope of our review

We have focused our 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 the provision of information about development applications which is prescribed as open access under the *Government Information (Public Access) Regulation 2009*.

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 recommendations and findings.

Table 4.1 Nature of regulatory burden

Excessive	Inefficient	Unnecessary
Onerous	Overlapping	Unclear purpose
Complex	Duplicative	Data collected but not used
	Causes delay	
	Unclear provisions	
	Inconsistent	
	Others better placed to perform function	

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*,[28] and supplemented this with the *Legislative Compliance Database* (LCDatabase) established by Local Government Legal (the legal services entity established by Hunter Councils).[29] 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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28 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.

29 Local Government Legal's *Legislative Compliance Database* is accessible by subscription. See http://www.lglegal.com.au/, accessed on 3 June 2015.

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 Issues 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 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. 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.

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 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 recommendation was implemented.

Draft Report

We released a Draft Report in January 2016 seeking feedback on 49 draft recommendations, as well as the issues in Appendices B and C for which we did not make a draft recommendation or finding.

We received 91 submissions, predominately from councils, but also NSW Government agencies, industry organisations, Regional Organisations of Councils, Water Utility Alliances and two individuals.

The response to the Draft Report was generally positive, with the exception of our draft recommendations for the regulation of local water utilities. The relevant chapters discuss stakeholders' feedback in detail.

Public Hearing

We held a public hearing in Sydney on 8 February 2016, to discuss our draft recommendations. The hearing involved three sessions, with roundtable contributions from councils and their associations, relevant NSW Government agencies, and industry groups. The hearing was also webcast, allowing wide participation. The transcript of the hearing and a link to the webcast are available on our website.

Appendix D lists the stakeholders consulted during our review.

Burdens for which we have not made recommendations

Included at Appendix B are burdens identified by stakeholders where we have not made a 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 recommendation or finding for a particular issue.

Prioritisation – the large number of issues raised by stakeholders has required us to prioritise and focus our recommendations and findings on the major areas of regulatory burden, or on those areas that burden a large number of councils.

Agencies are addressing the burden – for some issues we have not made 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 recommendations.

Other reasons why we have not made a 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 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.

We received feedback from stakeholders on some of the issues discussed in Appendices B and C in our Draft Report. In particular, stakeholders highlighted that the information prescribed open access under schedule 1 of the *Government Information (Public Access) Regulation 2009*, represents a unique and significant burden for local government. We agreed, and have made two new recommendations regarding this issue (Recommendations 34 and 35).

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*[30] 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*, Data NSW and the Information Asset Register, and a proposed central portal for local government reporting and data collection.

[30] IPART, *Local government compliance and enforcement – Draft Report*, October 2013, Recommendation 3.

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 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 preventing '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 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 have not made recommendations, or have 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.[31]

[31] IPART, *Local government compliance and enforcement – Draft Report*, October 2013, p 66.

Under the *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships* (Intergovernmental Agreement), there was 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.[32]

In our *Local Government Compliance and Enforcement* review, we recommended that the Department of Premier and Cabinet (DPC) revise the *NSW Guide to Better Regulation*[33] (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)
- the mechanisms for recovering councils' efficient regulatory costs (eg, fees, charges, debt recovery, funding arrangements, hypothecated revenue)
- 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.[34]

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). To assist State agencies to achieve this objective in relation to reporting, State agencies should have regard to Data NSW, the Information Asset Register and proposed central portal for local government reporting (discussed further in section 5.5 below) and our proposed *Register of local government reporting, planning and compliance obligations* (discussed further in section 5.2 below).

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32 *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships*, clause 5.8. The Agreement commenced on 8 April 2013 and expired on 30 June 2015.

33 Better Regulation Office, *Guide to Better Regulation*, November 2009, at http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_October_2009.pdf, accessed on 22 November 2015.

34 IPART, *Local government compliance and enforcement – Draft Report*, October 2013, p 72.

Our 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.

Stakeholders were highly supportive of our draft recommendation. We have not made any changes to our recommendation other than to require the Department of Finance, Services and Innovation (DFSI), rather than the DPC, to revise the Guide. The Better Regulation Division of DFSI now has responsibility for the Guide and provision of advice to State agencies on better regulation.

Recommendation

1 That the Department of Finance, Services and Innovation (DFSI) 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 identified and measures to address them are summarised in Box 5.1.

Box 5.1 Impact of new or amended regulatory obligations

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. Provide greater State funding to councils through fees, charges, levies or eliminating rate pegging.
- There is duplicative and multiple reporting to the State. There should be greater data sharing between agencies – eg, 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 Issues Paper and comments from councils at Coffs Harbour, Wagga Wagga and Sydney workshops.

Stakeholders' responses to our draft recommendation are summarised in Box 5.2.

Box 5.2 Stakeholder response to the draft recommendation - impact of new or amended regulatory obligations

- Overall this recommendation was strongly supported by councils and Local Government NSW (LG NSW).
- However, LG NSW was concerned the wording of the draft recommendation allowed for local government engagement to be sought after a commitment to regulate is made rather than before.
- OLG suggested this recommendation was unnecessary as one of its key roles is to identify where other State Government agencies' initiatives impact on councils and to highlight those impacts in Cabinet; and that a role of the Minister for Local Government was to represent the interests and perspectives of councils around the Cabinet table.
- Councils also made the following comments:
  - Local government should not just be consulted in relation to laws that have devolved responsibilities for councils, as other laws can have impacts on councils - for eg, 10/50 vegetation clearing laws.
  - There should be a highly visible specialist unit in State Government dedicated to better regulation and improved partnering with local government to replace the former Better Regulation Office (BRO).
  - To fully realise the benefits of this reform State agencies need to engage and consult with local government in the early phases of developing regulatory proposals.
  - State agencies should be sanctioned for failing to comply with the Guide.
  - Cultural change is needed at the officer level in State agencies.

Source: Various submissions to IPART Draft Report and comments from stakeholders at IPART Public Hearing.

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 Guide[35].

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 (BRS) 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*.[36]

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.

We agree with the view expressed in submissions to our Draft Report that State agencies should be encouraged to engage with councils early in the development of regulatory proposals that impact local government. The value of early consultation with councils is something that should be emphasised when DFSI revise the content of the Guide.

However, we do not agree with the suggestion from some stakeholders to impose sanctions on State agencies that do not comply with the Guide. Instead, we support greater transparency around the impact analysis of regulatory proposals through the publication of BRSs or RISs. We note too, the role of the Minister for Innovation and Better Regulation in 'championing' the use of the Guide by State agencies and the availability of the Better Regulation Division of DFSI to provide advice to agencies during regulatory proposal and BRS development.

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35 Better Regulation Office, *Guide to Better Regulation*, November 2009, at http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_October_2009.pdf, accessed on 22 November 2015.

36 *Subordinate Legislation Act 1989*, section 5.

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 to our Issues Paper addressed this 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
> - 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.[37]

As discussed above, the Intergovernmental Agreement was aimed at preventing cost shifting. Implementation of our recommendation 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 recommendation in this area. Concerns relating to regulated fees are discussed below in section 5.3.

[37] Local Government NSW submission to IPART, August 2015, pp 8-9.

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.[38]

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 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.[39]

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

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38 Stenning & Associates, *Register of regulatory functions undertaken by local government in NSW – Final Report*, October 2012, p 10, at http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Local_Government/Local_Government_Compliance_and_Enforcement, accessed on 6 December 2015.

39 IPART, *Local government compliance and enforcement – Draft Report*, October 2013, Draft Recommendation 5, p 77.

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

There was widespread stakeholder support for our draft recommendation, so we have maintained our recommendation unchanged.

Recommendation

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

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 Box 5.3.

Box 5.3 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. There should be a 'one on, two off' rule for local government regulatory requirements.
- 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.
- The State should keep a list or register 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.

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

Stakeholders' responses to our draft recommendation are set out in Box 5.4.

Box 5.4 Stakeholder response to the draft recommendation on cumulative burdens

- There was strong support for this initiative from Local Government NSW and numerous councils.
- Councils viewed the proposed register as:
  - a means to avoid duplicative reporting requirements
  - an invaluable internal audit and governance resource for councils, and
  - a planning tool.
- There were concerns that if the proposed register was not adequately resourced and kept up-to-date, with a mandate to use it, it would be a 1-year wonder and ineffective.
- Development of the register should occur in consultation with local government to ensure it adequately meets the requirements of both levels of government.
- Some councils did not want the proposed register to be a cost on councils.
- There was some support for either OLG or IPART developing and maintaining the register.

Source: Various submissions to IPART Draft Report and comments from stakeholders at IPART Public Hearing.

5.2.2 Background and analysis

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').[40]

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).

[40] The 'one on, two off' policy is explained at http://www.dpc.nsw.gov.au/programs_and_services/better_regulation/red_tape_reduction, accessed on 7 December 2015.

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.

We note the high level of support for the creation of this register from stakeholders. We agree with stakeholder feedback that for the register to be effective, it would be necessary to:

- consult with local government in the development of the register, and
- properly resource the development and maintenance of the register.

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 several 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, for example the market for building certification. 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 provider, requiring councils to undertake the inspections. 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.

Stakeholders were generally very supportive of our draft recommendations for regulated fees, and they have been maintained unchanged. We have also made a new recommendation to specifically review the basis on which development applications (DAs) fees are set. This is in addition to our recommendation that fees that remain regulated are reviewed more frequently (Recommendation 4).

Councils raised DA fees in particular as requiring review as they do not reflect the cost of processing applications and have not been reviewed for many years. Currently DA fees are based on an estimate of the value of the proposed work.[41] This can lead to the cost of development work being undervalued by applicants, requiring councils to engage surveyors to cost the work in order to determine the fee payable, and make subsequent adjustments. This, in turn, makes it difficult to design an efficient online payment system.

Therefore, we have recommended that the basis on which DA fees are set be reviewed to better reflect the efficient cost to the councils and the NSW Government of processing DAs, minimise disputes and subsequent adjustments, and facilitate online payment of DA fees.

[41] Section 246B of the *Environment Planning and Assessment Regulation 2000* sets out these fees which vary with the estimated value of the proposed development.

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 three to five 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 the NSW Government review the basis upon which the fees for Development Applications (DAs) are calculated to:

- better reflect the efficient cost to councils and the NSW Government of processing DAs
- minimise disputes and subsequent adjustments, and
- facilitate online payment of DA fees.

6 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 comment

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 to our Issues Paper, and workshops.

Issues raised by stakeholders regarding the burden created by regulated fees are summarised in Box 5.5.

Box 5.5 Council concerns regarding regulated fees

- 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.

Sources: Various submissions to IPART Issues Paper and questionnaire responses.

Submissions to the Draft Report on our three draft recommendations for regulated fees were generally very positive. Comments on each are summarised in Box 5.6.

Box 5.6 Stakeholder responses to draft recommendations

For removal of restrictions on fees

- There was generally very strong support for this recommendation.
- Some concerns were raised around definitions and the concept of 'efficient costs'.
- The United Services Union opposed deregulation of fees where it would result in local government having to compete with private enterprise potentially providing inferior services and causing job losses in local government.
- OLG argued for consistency of fees across the State, arguing that if councils could set their own fees, there would be no incentive to deliver services efficiently.
- Concern that in removing restrictions on fees there is the potential for significant variations between neighbouring councils providing a similar service.

For regular review and annual indexing of regulated fees

- There was very strong support for this recommendation, although more for the CPI / index annual adjustment to fees than reviews every 3 to 5 years which stakeholders considered may become onerous where extensive feedback is sought from councils on cost efficiency issues.
- An index of fee related costs was preferred to CPI increases, as stakeholders considered:
  - an index may provide more certainty and clarity to councils than pegging fees to CPI increases, and
  - it more appropriate to apply the Local Government Cost Index (even with its limitations) as it is based on more accurate notion of council costs structures than CPI.
- Councils are required to review fees annually – same should apply to agencies that set fees that materially affect the financial performance of councils – a review every 3 to 5 years would take 12 months to complete – thus a longer period for councils to bear losses.
- Councils want effective engagement with agencies in the review of fees.
- The costs of processing of development applications (DAs) are significant for council and resourcing is constrained by the statutory fee regime. The fee should be based on efficient costs.

For NSW Government to reimburse councils the shortfall in efficient costs for fees set below cost recovery

- There was generally very strong support for this recommendation.
- However some councils raised concerns about how:
  - the reimbursement process would work, and
  - efficient costs would be determined.

Sources: Various submissions to IPART Draft Report and comments made at IPART Public Hearing.

In submissions to both the Issue Paper and Draft Report, 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.[42]

5.3.2 Background and analysis

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.[43]

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.[44]

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.[45]

Nevertheless, in response to stakeholder feedback and evidence that certain regulated fees are currently capped below cost recovery, we have made recommendations for more cost-reflective fees which vary depending on the market for council services.

We recommend fees be deregulated only for services delivered in competitive markets. Monitoring and benchmarking, which we have recommended should occur for deregulated fees, would also ensure that fees remain reasonable, and address concerns raised by stakeholders about consistency across councils.

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42 *Local Government Act 1993*, section 610(F).
43 *Swimming Pools Regulation 2008,* section 18A.
44 Independent Local Government Review Panel, *Revitalising Local Government*, October 2013, p 48.
45 Office of Local Government, *Fit for the Future - NSW Government Response to the Independent Local Government Review Panel recommendations, Local Government Acts Taskforce recommendations*, September 2014, p 6.

However, there may be variation in efficient costs between councils, due to factors such as the distances required to travel to undertake inspections. To recognise this variation in efficient costs, benchmarking of fees should occur against similar councils. While this may mean fees vary between councils which have different costs, the existence of competition should ensure fees remain cost-reflective and are not excessive.

For fees that remain regulated, the costs of undertaking more regular reviews would be outweighed by more cost-reflective fees, which send better signals to users about the costs of council services as well as to councils themselves about their efficiency relative to other councils. We have recommended such fees be increased annually in line with CPI or an index of fee related costs so that they keep pace with increasing costs between reviews. As noted in Box 5.6 above, councils have expressed a preference for an index of council costs rather than CPI.

Our recommendation that the NSW Government reimburse councils the shortfall in efficient costs for fees that are capped below cost recovery (Recommendation 6) is likely to result in significant costs to the NSW Government, especially if the gap between efficient costs and fees is large. These costs are currently borne by councils, and indirectly by the community, when fees are set below cost recovery.

Our new Recommendation 5 for a review of the basis upon which DA fees are calculated is aimed at increasing cost recovery, as well as minimising disputes over this fee which arise when developers under-quote the estimated cost of proposed developments, requiring councils to engage surveyors to cost the work and pursue any fee shortfall.

Rather than being based on the value of the proposed works, which does not necessarily reflect the cost to the council or the NSW Government of processing DAs, this review could consider whether fees could, for example, be based on type of development or other factors that better reflect the cost of processing and are less open to dispute.

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), and
- 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.[46] The two largest groups of recipients for NSW Government grants are local councils and non-government organisations (NGOs).[47]

Our recommendations aim to address the regulatory and reporting burdens identified by councils in 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).[48]

We recommend removing acquittal requirements for untied grants to remove an unnecessary burden for councils as untied grants have, by definition, no restrictions on how funds are dispersed and acquittal does not affect how the funds are spent.

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.[49] Our recommendation for four years is consistent with our proposal relating to temporary employment (Recommendation 32), and 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.

46 Audit Office of NSW, *Performance Audit – Grants Administration*, May 2009, p 2.
47 Ibid, p 25.
48 Department of Premier and Cabinet, *Good Practice Guide to Grants Administration,* November 2010.
49 Department of Premier and Cabinet, *Good Practice Guide to Grants Administration,* November 2010, p 23.

Recommendation

7 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 comment

Issues raised by stakeholders concerning grant funding to councils are summarised in Box 5.7.

Box 5.7 Stakeholder comments on the grants system and our draft recommendations

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 (ie, overheads), and
- grants are often given for new infrastructure, but councils cannot afford ongoing maintenance, representing a form of cost shifting.

Stakeholder response to the Draft Report:

- Councils consider that they should be recognised as separate from NGOs when applying for grants.
- A number of councils wanted the proposed $20,000 limit for streamlined grant acquittal processes to be raised to $50,000.
- There was support for a simpler application system, with less focus on 'shovel ready' projects.

Sources: Various submissions to IPART Issues Paper and Draft Report and council comments at the Wagga Wagga and Dubbo workshops.

As noted above, a number of councils wanted the limit for a streamlined grant acquittal process to be raised to $50,000 rather than $20,000. We are not recommending this higher level, as we believe that an increase to $20,000 is the best balance between ensuring accountability and reducing administrative burden.

5.5 Multiple requirements for reporting and data collection

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 recommendations would:

- reduce, and help prevent, future instances of the same or similar data being requested by different agencies (ie, duplicative reporting) by allowing agencies and the community to access reports and datasets which may already contain the data being sought
- provide a central point for councils to submit data and generate reports that are used by multiple agencies, which means councils would often have to provide data only once, and enable councils to develop mechanisms for automated data transfer that can reduce the burden in cases where reporting to multiple systems is necessary.

To achieve these outcomes, we recommend using data standards and existing tools in the NSW Government's Information Management Framework, and emphasising the principles of the NSW ICT Investment Policy. This approach is already established under the NSW Government ICT Strategy and is being implemented by State Government agencies.

Before requesting data, State agencies should consider what information is already available, via Data NSW, the Information Asset Register or our proposed central portal for local government reporting. Agencies should undertake a regulatory impact analysis of regulatory proposals involving new reporting, to prevent excessive or duplicative requirements, as discussed in Section 5.1 above.

We received general support for our draft recommendation. However, we have amended our recommendation to better reflect how existing resources such as Data NSW and the Information Asset Register could be used by State agencies and councils, with the assistance of the Department of Finance, Services and Innovation (DFSI).

We have also clarified that a central portal for local government reporting could be developed to supplement these existing resources. Such a portal would not replace all existing registers nor cover all reporting requirements, but would standardise and streamline the collection of data that is required for use by multiple agencies. DFSI has previously supported the development of a number of similar systems designed to standardise or bring data together across agencies by providing project management support or subject matter expertise.

We have also removed our draft recommendation for OLG to take the role of gate-keeper for new requirements on councils to report to State agencies. Whilst that recommendation was generally supported by stakeholders, we consider the objectives of the gate-keeper role to prevent excessive or duplicative requirements being imposed by State agencies would be achieved more effectively through our Recommendations 1, 2, and 8 and 9 below.

Recommendations

8 That NSW Government agencies collecting local government data and information make this data discoverable through the Data NSW open data portal or the Information Asset Register maintained by the Department of Finance, Services and Innovation.

9 That the Department of Finance, Services and Innovation:

- support NSW Government agencies to use the Open Data Rolling Release Schedule to establish clear timeframes for publishing local government data and information in Data NSW (in machine readable formats)
- support councils to make local government data and information available for discovery through Data NSW or the Information Asset Register, and
- support the Office of Local Government to develop a central portal for local government reporting and streamlined data collection.

5.5.1 Stakeholder comment

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 (eg, 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.[50]

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.

[50] Queanbeyan City Council, Tweed Shire Council, Ku-ring-gai Council, Mosman Municipal Council and LGNSW, submissions to IPART Issues Paper, August 2015.

- Data-warehousing or a central repository may make reporting more efficient and help in measuring the cumulative effect of reporting requirements.[51]

Stakeholders' responses to the recommendation in our Draft Report are set out in Box 5.8.

Box 5.8 Stakeholder response to draft recommendation on multiple reporting/data management

- There was considerable support for our draft recommendation from councils, industry bodies and Roads and Maritime Services, subject to some qualifications.
- There were some concerns around privacy, risk management, security of information, ease of use, data quality and management requirements, and analytical capabilities.
- Councils generally viewed the use of a centralised portal as beneficial in avoiding duplication.
- A number of submissions did not support a charge to use such a portal.
- According to the NSW Environment Protection Authority, the current project being led by the Department of Finance, Services and Innovation to provide environmental data to a centralised inter-agency Environmental Data Portal will facilitate data sharing between State agencies. It is also expected to enable some direct reporting of council data through the Portal in future.

Source: Various submissions to IPART Draft Report.

5.5.2 Background and analysis

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.[52]

The NSW Government Investment Policy and Guidelines establish a collaborative approach to ICT investment across State Government agencies. The Policy requires agencies to leverage existing IT solutions and data sources, demonstrate standardisation and interoperability to support the sharing of data.

[51] Wagga Wagga and Dubbo workshops, 15 and 16 September 2015; Queanbeyan City Council, Water Directorate Incorporated, Central NSW Councils, Tweed Shire Council, Ku-ring-gai Council, Gunnedah Shire Council, Maitland City Council and LGNSW, submissions to IPART Issues Paper, August 2015.

[52] See http://www.govdc.nsw.gov.au/about-nsw-government-ict-strategy, last accessed on 4 December 2015.

The NSW Government Information Management Framework is a key initiative of the NSW Government ICT Strategy. The Framework is an agreed set of policies, standards and guidelines that enable data and information to be managed consistently and appropriately shared or re-used by agencies, the community or industry.

These policies and standards are intended for use by State agencies, but could also be adopted by local government. Other relevant initiatives of the NSW Government ICT Strategy include:

- The Data NSW open data catalogue which makes government data publicly discoverable and available for re-use.[53]
- The Information Asset Register which allows State Government agencies to discover and re-use sensitive, unpublished data collected by other agencies.[54]
- OpenGov NSW, a searchable online repository for government publications which contains annual reports, strategic plans, guidelines, policy documents and GIPA Act related releases.[55]

State agencies could make use of Data NSW to publish local government data. Suitable local government data could be identified and clear timeframes for publishing the data in Data NSW could be established in the Open Data Rolling Release Schedule.[56]

Some councils already publish reports on the OpenGov NSW website. Councils could also proactively make their data available for discovery and re-use through Data NSW and the Information Asset Register.

The use of common data standards[57] across local government and State Government will enable data to be reported or collected once and then re-used for a variety of purposes, by a variety of systems. It would support the automation of reporting processes so that data can be reported multiple times with minimal effort.[58]

53 See http://data.nsw.gov.au/, last accessed on 4 December 2015.
54 See https://www.finance.nsw.gov.au/ict/resources/information-asset-register, last accessed on 4 December 2015.
55 See https://www.opengov.nsw.gov.au/main, last accessed on 4 December 2015.
56 See http://data.nsw.gov.au/open-data-rolling-release-schedule, last accessed on 30 March 2016.
57 Such as CSV and web services that are easier to consume, or extract and analyse without the need for manual reporting.
58 This could be achieved through the development of Application Programming Interfaces or APIs.

Together, Data NSW, the Information Asset Register and OpenGov enable State agencies and councils to discover existing reports and data sources that can be reused. In addition, there would appear to be merit in developing a central portal for local government reporting, to standardise and streamline the collection of data that is required for use by multiple agencies. DFSI has previously supported the development of a number of similar systems designed to standardise or bring data together across agencies by providing project management support or subject matter expertise.

In our view, once an authoritative central register of local government reporting requirements is developed (as proposed by our recommendation 2), there would be a basis for identifying the data that could be streamlined and shared by State agencies and councils. This data could be shared through a specific portal for local government reporting in future.

By leveraging technology in the manner outlined above, standard reporting, publishing and data warehousing can streamline and improve the efficiency of reporting for 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.

Councils were highly supportive of our draft recommendation.[59] However, we received one submission from a member of the public that was strongly opposed.[60] We are also aware that the NSW Government sought to implement this reform previously, but were unable to gain the support to do so.[61] We have maintained our recommendation unchanged. In our view, the potential cost savings to the local government sector are significant enough to warrant a careful review of existing print media requirements, with a view to removing requirements where the costs exceed the benefits.

Recommendation

10 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 comment

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.[62]

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.[63]

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59 For example, Randwick City Council, Shoalhaven City Council, Bankstown City Council, Parramatta City Council, Riverina Eastern Regional Organisation of Councils and Southern Sydney Regional Organisation of Councils, submissions to IPART Draft Report, February 2016.

60 H Rolfe submission to IPART Draft Report, February 2016.

61 See Local Government Amendment (Red Tape Reduction) Bill 2014, at http://www.parliament.nsw.gov.au/prod/parlment/NSWBills.nsf/1d436d3c74a9e047ca256e690001d75b/5ce40c1eb81d5ae3ca257d710017d795?OpenDocument, accessed on 22 March 2016.

62 LGNSW and Albury City Council, submissions to IPART Issues Paper, August 2015.

Stakeholders' responses to our draft recommendation are summarised in Box 5.9.

Box 5.9 Stakeholder response to the draft recommendation on public notices

- The recommendation had a high level of support from councils, with one council disagreeing. However, a submission from the general public strongly opposed the recommendation.
- Most councils thought print media was costly and that this recommendation would realise significant cost savings. An additional cost identified was the delay caused by having to publish notices in newspapers.
- Councils in support of the recommendation argued in favour of flexibility for councils to determine the appropriate method of advertising/notification based on the needs of their community and the target audience.
- Submissions acknowledged that continued use of print media would be needed for certain local information dissemination. Local Government Areas have different demographics and not all people have access to non-print media.
- There were different views amongst stakeholders as to which print media requirements should be retained or removed – for eg, in relation to advertising for DAs and tenders; notification of rezoning and development control plans, and advertising senior staff positions.
- Some councils had concerns with how cost-benefit analysis would be undertaken, in particular how councils could show that the cost of print media exceeds the benefit to the community; or place a value on the benefit to the community.
- The submission from the member of the public urged IPART to abandon this recommendation on the following bases:
  - Costs of print media are not significant, and negligible when incorporated with other council news and information.
  - Need to consider community benefit and loss of transparency for the community. Print media notifications help to minimise the potential for improper dealings by councils.
  - Print media is readily accessible and comparatively permanent, providing lasting publicly accessible records. In the electronic sphere, even the best websites need to be visited and actually read; social media reach is neither comprehensive nor reliable in content.

Sources: Various submissions to IPART Draft Report.

[63] Wagga Wagga and Sydney workshops, 15 September 2015 and 8 October 2015; LGNSW, submission to IPART Issues Paper, August 2015; Blue Mountains City Council, Council of the City of Sydney, Rockdale City Council and Wagga Wagga City Council, questionnaire responses, August 2015.

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.[64] In October 2014, the NSW Government introduced the Local Government Amendment (Red Tape Reduction) Bill 2014 to implement this reform. However, the amendments were opposed, and the Bill has since lapsed.[65]

Box 5.10 provides examples of current legislative requirements to use print media.

Box 5.10 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.

64 Office of Local Government, *Fit for the Future, NSW Government Response to the Independent Local Government Review Panel recommendations, Local Government Acts Taskforce recommendations*, September 2014, p 21.

65 See http://www.parliament.nsw.gov.au/prod/parlment/NSWBills.nsf/1d436d3c74a9e047ca256e690001d75b/5ce40c1eb81d5ae3ca257d710017d795?OpenDocument, accessed on 22 March 2016.

In considering the costs and benefits of removing any of these print media requirements, DPE or OLG may need to take into account the different demographics of local government areas and that some use of print media is still likely to be needed. We note from the costs information provided by some councils in answering our questionnaire that the potential savings to the local government sector would be worthwhile, even if some continued use of print media is assumed.[66]

[66] Rockdale City Council and Wagga Wagga Council, questionnaire responses, August 2015.

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 also recognised the importance of regional alliances and regional approaches to water planning to the provision of regional water supply and sewerage services over the long term.

Our recommendations in this area aim to:

- achieve greater efficiencies through structural reform and development of a new regulatory framework based on a catchment or regional alliance basis, and
- reduce the reporting burden on LWUs by taking a more efficient, targeted and 'whole-of-government' approach.

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

Other burdens raised by councils on which we have not made 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).

In responding to our Issues Paper and at council workshops, 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 (IWCM) 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 outcomes-based regulatory approach to replace the BPM Framework.

We made two draft recommendations to address these identified burdens:

- that DPI Water undertake central water planning for LWUs on a catchment basis to replace water planning LWUs currently undertake through IWCM Strategies, and
- enable LWUs with the capacity to manage their utilities to be regulated under the *Water Industry Competition Act 2006* (WIC Act).

We identified the WIC Act as an outcomes-focused and risk-based legislative framework that establishes a licensing regime for water utilities to ensure the protection of public health, consumers and the environment. We consider that the objectives of the WIC Act and the elements of the framework could appropriately apply to both private and local water utilities.

However, stakeholders did not support these draft recommendations. While they expressed a range of very different views about the need for regulatory reform, stakeholders strongly rejected our recommendation to enable the regulation of LWUs under the WIC Act. They expressed a clear preference for regulation under the LG Act or LWU-specific legislation. They also had strong concerns about DPI Water conducting centralised water planning and supported the continuation of individual IWCM for LWUs and a greater focus on regional or catchment planning.

Stakeholders have noted that a number of regional alliances and other arrangements (through Regional Organisations of Councils (ROCs) and county councils) have been developed by LWUs to improve regional water planning and coordination.[67] As LGNSW notes:[68]

> Regional alliances enable LWUs to undertake catchment based water supply and demand planning and potentially plan, fund and deliver infrastructure necessary to provide secure, safe and efficient regional water supply and sewerage services over the long term.

[67] For example, the Lower Macquarie Water Utilities Alliance, CENTROC and MidCoast Water.
[68] LGNSW submission to IPART Draft Report, February 2016, p 28.

The importance of regional approaches to water planning was also recognised by the Water Directorate, with some members noting:[69]

> …there are opportunities to improve engagement with state agencies on regional planning issues, including for example, regional infrastructure solutions, catchment management strategies and regional program funding.

Stakeholder submissions to the Draft Report also identified a range of issues with the existing LWU regulatory framework and suggested improvements, including:

- Coordinating the roles and responsibilities of the NSW Government agencies involved in regulating LWUs to deliver a whole-of-government approach, including:
  - Department of Primary Industries – Water (DPI Water)
  - Environment Protection Authority
  - NSW Health, and
  - Office of Local Government.
- Resolving the delays in DPI Water approvals for new infrastructure under section 60 of the LG Act and for other plans and strategies submitted by LWUs.
- Clarifying the role of catchment or regional-based water supply and demand planning and formalising it to improve the security, safety and efficiency of regional water supply and sewerage services.
- Strengthening operational powers for LWUs to address illegal water use and discharge of water, conservation measures, meter protection, road works permits and powers of entry.
- Developing deemed customer contracts for the supply of water and provision of sewerage services in a LWU context.
- Adopting risk-based and outcomes-focused regulation that provides flexibility for LWUs when undertaking Integrated Water Cycle Management planning.
- Removing barriers that restrict LWUs to an inadequate number of specialist consultants and training providers and cause delays and increased costs.

We acknowledge that stakeholders would prefer these issues to be addressed through amendments to the existing regulatory framework. However, we consider that structural reform will achieve greater efficiencies and recommend a new regulatory framework based on a catchment or regional alliance basis, rather than on an individual LWU basis. This framework should coordinate the roles and responsibilities of the NSW Government agencies involved in regulation of LWUs to deliver a whole-of-government, risk-based and outcomes-focused regulatory approach.

[69] Water Directorate submission to IPART Draft Report, February 2016.

Recommendation

11 That the Department of Primary Industries Water (DPI Water) regulate Local Water Utilities (LWUs) on a catchment or regional basis, rather than on an individual LWU basis, using a whole-of-government, risk-based and outcomes-focused regulatory approach.

6.1.1 Stakeholder comment

As noted above, stakeholders have expressed a range of very different views about the need for reform of the regulatory framework applying to LWUs. Some stakeholders argued for an overhaul of the governance framework for LWUs and for a principles- or outcomes-based regulatory approach to replace the BPM Framework. Other stakeholders' concerns were focused on particular elements of the current regulatory framework.

The Water Directorate – an association that comprises 97 LWUs around NSW, outlined its concerns as follows:[70]

> 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.

Stakeholder comments on the issues they identified with the regulation of LWUs are summarised in Box 6.1.

70 Water Directorate submission to IPART Issues Paper, August 2015, p 1.

Box 6.1 Summary of stakeholder comments on regulation of LWUs

BPM framework and need for whole-of-government approach

- The requirements within the BPM Framework should represent a whole of government approach and demonstrate alignment with the better regulation principles.
- 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 culture and dysfunction of State agencies involved present barriers to LWUs providing Best Practice, compliance-based water and sewer services to their communities.
- The problem is the disjointed planning and regulatory framework that creates conflicting or costly goals for the various regulatory bodies.

Integrated Water Cycle Management (IWCM) Strategies

- 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.
- LWUs support the principles and concepts embedded in IWCM planning. It is the methodology imposed by DPI Water to allow strategic outcomes that is of major concern.

Approvals under section 60 of the LG Act:

- DPI Water does not have the resources and/or capability to manage section 60 approvals.
- The processes as set down by DPI Water are outdated. They do not allow for innovation and cause unnecessary delays.
- Agency coordination of infrastructure approval processes under s60 of the LG Act is suboptimal. The EPA prefers water recycling over discharge while discharge is favoured through IWCM planning.

Strengthened operational powers and conditions of supply

- LWUs need contemporary customer contracts and strengthened operational powers to address illegal water use and discharge of water, conservation measures, meter protection, road works permits and powers of entry.

Shortage of approved consultants and training providers

- There is only one approved consultant for secure yield analysis. This increases costs and timeframes.
- Arrangements for training LWU staff are inefficient, with protracted negotiations and high costs for DPI Water training on chemical dosing systems and a lack of coordination between DPI Water, NSW Health and TAFE hampering training in fluoridation.

Source: Various submissions to IPART Issues Paper and Draft Report, comments from councils at Coffs Harbour and Wagga Wagga workshops, and comments from stakeholders at IPART Public Hearing.

Stakeholders also commented on the importance of regional alliances and regional approaches to water planning, as follows:

- Regional planning by LWUs may be necessary to ensure water supply and demand options are considered in the context of catchments where there are many LWUs within a single catchment. There are several examples of regional water planning through Regional Organisations of Councils (ROCs), alliances and county councils.
- While regional planning has merit, there needs to be recognition of the local knowledge and expertise that is commonly held at the local level by operators that have been managing local resources for some time.
- Water planning is more effective when considered from a whole of catchment perspective.

While a small number of stakeholders agreed with our draft recommendations that DPI Water undertake central water planning for LWUs on a catchment basis and to enable LWUs with the capacity to manage their utilities to be regulated under the WIC Act, most disagreed. Their comments on these draft recommendations are summarised in Box 6.2.

Box 6.2 Summary of stakeholder comments on draft recommendations

Catchment based water planning by DPI Water

- We disagree that DPI Water should undertake IWCM Strategies and Plans for all LWUs on a catchment basis. This is unworkable and would rob individual LWUs of their independence in water planning.
- DPI Water does not have the knowledge, understanding and capacity to provide water planning for the whole state equivalent to that which LWUs currently undertake.
- There is a problem in separating responsibility for planning from that of delivery.
- DPI Water should continue to deliver the highest level of water sharing plan at the catchment and sub-catchment level. These plans should be prepared based on the principles of IWCM, and provide clear guidance for catchment issues, impacts and objectives, but not the strategic service delivery planning decisions for LWUs.

Enabling LWUs to be regulated under the WIC Act

- The primary objective of the WIC Act is competition and the private sector which does not align with LWUs as essential service providers with their communities.
- A dual regulatory regime may cause confusion and reduce opportunities for regional cooperation.
- The WIC Act is at least as prescriptive and onerous as the BPM Framework.

Source: Various submissions to IPART Draft Report and comments from stakeholders at IPART Public Hearing.

6.1.2 Background and analysis

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 Box 6.3.

Box 6.3 Other reviews and recommendations for structural reform

Armstrong and Gellatly 2008 – *Report of the Independent Inquiry into Secure and Sustainable Urban Water Supply and Sewerage Services for Non-Metropolitan NSW*

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]

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.[b]

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.[c]

[a] Armstrong, I and Gellatly, C, *Report of the Independent Inquiry into Secure and Sustainable Urban Water Supply and Sewerage Services for Non-Metropolitan NSW*, Volume 1, December 2008 (Armstrong and Gellatly), pp 6, 24-25.

[b] National Water Commission, *Urban Water in Australia: future directions*, April 2011, pp x and 49.

[c] Productivity Commission, *Australia's Urban Water Sector*, October 2011, p LVII.

Armstrong and Gellatly recommended the State's LWUs be aggregated into 32 regional groups and identified the following organisational structures that should be considered for regional groups of LWUs:[71]

- binding alliance
- council-owned regional water corporation, and
- current structural arrangements for some large general purpose councils and county councils.

It evaluated each of these organisational structures, including the impact on councils and their communities.

While the structural reform recommended by Armstrong and Gellatly and other reviews has not occurred, LWUs have developed a range of cooperative arrangements to improve their efficiency and achieve economies of scale. Examples include:

- Lower Macquarie Water Utilities Alliance, established in 2008. It comprises 12 councils in the west of NSW: Bogan, Bourke, Brewarrina, Cobar, Coonamble, Narromine, Gilgandra, Walgett, Warren, Warrumbungle and Wellington Shire Councils and Dubbo City Council.[72]
- CENTROC Water Utilities Alliance, established in 2009. It comprises Central Tablelands Water and 14 central NSW councils: Bathurst, Blayney, Boorowa, Cabonne, Cowra, Forbes, Lachlan, Lithgow, Oberon, Orange, Parkes, Upper Lachlan, Weddin and Young Shire Councils.[73]
- MidCoast Water, a county council formed in 1997. It is responsible for reticulated water supply and sewerage systems in the Greater Taree, Gloucester Shire and Great Lakes local government areas.[74]
- Clarence Valley Coffs Harbour Regional Water Supply Scheme – constructed by Coffs Harbour and Clarence Valley Councils as a result of joint water planning undertaken since the late 1990s.[75]

Some stakeholders have also suggested that there may be scope for regional collaboration on LWU operations through the Regional Joint Organisations (JOs) that are being formed as part of the NSW Government's local government reform program.[76] The core functions of JOs are regional strategic planning, working with State Government and regional leadership and advocacy. They may also

71 Armstrong and Gellatly, p 6.

72 http://www.lmwua.nsw.gov.au/, accessed on 30 March 2016.

73 http://www.centroc.com.au/centroc-strengthening-councils/water-utilities-alliance/, accessed on 30 March 2016.

74 http://www.midcoastwater.com.au/site/history, accessed on 30 March 2016.

75 Clarence Valley Council, submission to IPART Draft Report, February 2016 and http://www.coffsharbour.nsw.gov.au/places-for-living/drinking-water-supply/water-sources/Pages/regional-water-supply-scheme.aspx, accessed on 30 March 2016..

76 For example, Kyogle Council, Orange City Council and Shire of Gunnedah submissions to IPART Draft Report, February 2016.

decide to undertake regionally defined functions such as strategic capacity building and regional service delivery.[77]

The NSW Government will need to consider the most appropriate organisational arrangements to support a new regulatory framework.

Separate from these structural reform issues, stakeholders identified inefficiencies in the regulatory arrangements for LWUs. These inefficiencies arise for a range of reasons, including:

- sub-optimal coordination of the various agencies involved in regulating LWUs (DPI Water, the EPA, NSW Health and the OLG)
- inadequate resourcing of agencies, and
- overly prescriptive and inflexible approaches to regulation.

DPI Water has announced that it is undertaking a broad-ranging review of the State's water sector and has advised that it is commencing a major review of its regulation of LWUs. It considers that this review will address the issues raised by stakeholders to our review.[78]

With this existing commitment to review, we recommend DPI Water regulates LWUs on a catchment or regional basis, rather than on an individual LWU basis, using a whole-of-government, risk-based and outcomes-focused regulatory approach.

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.

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

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77 http://www.fitforthefuture.nsw.gov.au/joint-organisations, accessed on 30 March 2016.

78 DPI Water submission to IPART Draft Report, February 2016 and http://awa.asn.au/AWA_MBRR/Publications/Latest_News/Major_review_looms_for_NSW_water_sector.aspx, accessed on 30 March 2016.

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)), and
- consolidates or streamlines all reporting (eg, aligning trade waste reporting with other LWU reporting to DPI Water).

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).

The EPA has advised that it is currently working to provide data to the centralised inter-agency Environmental Data Portal, led by the Department of Finance, Services and Innovation. The EPA expects that this portal will facilitate data sharing between state agencies.[79] This could help to remove duplicative reporting requirements.

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

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

[79] Environment Protection Authority submission to IPART Draft Report, February 2016.

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 Box 6.4.

Box 6.4 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.

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

Stakeholders expressed strong support for our draft recommendation, particularly to reduce remove duplicative reporting requirements from different agencies.[80]

[80] For example, Port Macquarie Hastings Council, Wyong Shire Council, Tweed Shire Council, submissions to IPART Draft Report, February 2016.

However, not all stakeholders agreed that DPI Water's reporting requirements under the BPM Framework are onerous, inefficient or unnecessary. The Lower Macquarie Water Utilities Alliance argued:[81]

> …the DPI Water Performance and Benchmarking Reports are the "jewels in the crown" of performance reporting in all of Australia, are the envy of other jurisdictions across Australia and the world…The reporting done annually is world class and must not be wound back just because some stakeholders find it a "bit hard" to do.

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.[82]

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

81 Lower Macquarie Water Utilities Alliance submission to IPART Draft Report, February 2016.

82 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.

- 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.

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.[83] 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.

[83] *Local Government Act 1993,* section 90 and *Local Government (General) Regulation 2005*, clause 28.

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.

Councils 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*.[84]

We recommend the mandatory use of a standardised service report for technicians that service AWTS to address the administrative and compliance burdens on councils. The Office of Local Government is responsible for administration of the onsite system provisions under the LG Act and is therefore best placed to determine a template for the service report, in consultation with councils and NSW Health. Councils would have the option to facilitate the online submission of service reports from technicians to further reduce administrative burdens on councils and technicians.

Recommendations

13 That the Office of Local Government determine a standardised service report template to be used by technicians undertaking quarterly servicing of aerated wastewater treatment systems, in consultation with NSW Health and 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 the Office of Local Government as a standard condition of approval to operate an aerated wastewater treatment system.

[84] See IPART, *Local government compliance and enforcement – Draft Report*, October 2013, pp 325-342.

6.3.1 Stakeholder comment

Penrith City Council acknowledges that approving and inspecting onsite systems are appropriate regulatory functions for councils.[85] However, Penrith and other council stakeholders have identified the administrative burdens associated with this regulatory function.[86] 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.[87]

Councils identified that administrative burdens could be greatly reduced if service technicians used a standard AWTS reporting template and electronically submitted reports to council.[88]

Stakeholders strongly supported our draft recommendation for development of a standardised service report template, noting there are many examples that can be used to develop a standard template and specialist onsite sewage management interest groups to liaise with.[89]

Most stakeholders also support the imposition of a standard condition of approval to operate an AWTS that requires service reports to be provided to councils using the standardised template. Some stakeholders noted that this approach would make the home owner responsible for use of the standardised service template, not the service technician.[90]

Some stakeholders argued that our recommendations should have repeated the recommendations of the 2012 Domestic Wastewater Inquiry[91] to:

- introduce a formal licensing system for installation and maintenance of onsite systems,[92] and
- develop an electronic portal for submission of standardised reports.[93]

85 Penrith City Council submission to IPART Issues Paper, August 2015.
86 Penrith City Council submission to IPART Issues Paper, August 2015; Coffs Harbour workshop, 10 September 2015.
87 Coffs Harbour workshop, 10 September 2015 and The Hills Shire Council questionnaire response August 2015.
88 Coffs Harbour workshop, 10 September 2015.
89 For example, Septic Tank Action Group (STAG), Port Stephens Council and Warringah Council submissions to IPART Draft Report, February 2016.
90 Camden Council, NSW Farmers Association, Water NSW, Penrith City Council submissions to IPART Draft Report, February 2016.
91 NSW Parliament, Legislative Assembly, Committee on Environment and Regulation, *Inquiry Into the Regulation of Domestic Wastewater*, Report 1/55, November 2012, p vii, Recommendation 14, at http://www.parliament.nsw.gov.au/, accessed on 16 December 2015 (Domestic Wastewater Inquiry).
92 STAG, NSW Health, Water NSW, Wollondilly Shire Council and Penrith City Council submissions to IPART Draft Report, February 2016.
93 STAG, Port Macquarie Hastings Council and Wollondilly Shire Council submissions to IPART Draft Report, February 2016.

One council suggested that the requirement for approvals to operate AWTS should be removed altogether, as these systems are already subject to quarterly servicing.[94]

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 performance and keeping an up-to-date register of all onsite systems in their area.[95]

The LG Act allows councils to charge a fee for approval applications or renewals, and for undertaking inspections.[96]

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).[97] 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.[98] 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.[99]

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.[100]

Table 6.1 outlines the regulatory framework for the majority of onsite systems used by households.

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94 The Hills Shire Council, questionnaire response, August 2015.

95 *Local Government Act 1993*, sections 68 and 113.

96 *Local Government Act 1993,* sections 80 and 608.

97 *Local Government (General) Regulation 2005*, clauses 40-41.

98 For *example*, see NSW Health certificates of accreditation for various AWTS systems, NSW Health, Certificate of Accreditation, available at: http://www.health.nsw.gov.au/environment/domesticwastewater/Pages/awts.aspx, accessed on 3 December 2015.

99 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.

100 The Hills Shire Council, questionnaire response, August 2015.

Table 6.1 Regulatory process for onsite systems

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

[a] *Local Government (General) Regulation 2005*, clause 34.

The Office of Local Government (OLG) has an advisory role in this area. It previously developed guidance material for councils and onsite system operators.[101] 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 Box 6.5.

[101] For *example*, the *Easy Septic Guide* for householders: http://www.olg.nsw.gov.au/public/my-home/onsite-sewage-management-septic-tanks, accessed on 3 December 2015.

Box 6.5 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.

Source: IPART, *Local government compliance and enforcement – Draft Report*, October 2013, pp 337-341.

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.[102] 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.[103]

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.[104] This recommendation has not been implemented.

We have amended our recommendations to make OLG responsible for determination of a standardised reporting template for AWTS service technicians, rather than NSW Health. We consider that given OLG's responsibility for onsite provisions under the LG Act, it is best placed to determine a standardised reporting template. This should be done in consultation with councils and NSW Health which has technical expertise associated with its existing role in accrediting the design of onsite systems and imposing servicing requirements through these accreditations. 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. A state-wide electronic portal for submission of standardised service reports, as recommended by the Domestic Wastewater Inquiry, may also reduce the administrative burden of data entry on councils. This could be considered as a medium-term goal for OLG, which is currently redeveloping the companion animals register (see Chapter 11).

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102 NSW Parliament, Legislative Assembly, Committee on Environment and Regulation, *Inquiry Into the Regulation of Domestic Wastewater*, Report 1/55, November 2012, p vii, Recommendation 14, at http://www.parliament.nsw.gov.au/, accessed on 16 December 2015 (Domestic Wastewater Inquiry).

103 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.

104 Legislative Assembly, Committee on Environment and Regulation, *Inquiry into the regulation of Domestic Wastewater,* November 2012, (Domestic Wastewater Inquiry Report), p 45.

We understand stakeholders' support for a formal licensing system for the installation and maintenance of onsite systems but note this would involve imposing more red tape. However, 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 recommendation in relation to minimum qualifications for AWTS service technicians.

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,[105] and
- the administrative workload associated with requiring landowners to obtain both an approval to install and an approval to operate onsite systems.[106]

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

[105] Coffs Harbour workshop, 10 September 2015.

[106] Penrith City Council submission to IPART Issues Paper, August 2015 and Coffs Harbour workshop, 10 September 2015.

Figure 6.1 Example of a template for aerated system service reports

GENERIC SERVICE AGENT
GENERIC ADDRESS
GENERIC PHONE NUMBER
ABN

Aerated Wastewater Treatment System (AWTS) SERVICE REPORT

Name/Owner/Occupier_____

Site Address: _____Town / Suburb:_____PC:____

Council Area: _____Approval No:_____ System:_____

System age:____ Yrs; Service cycle : 1 / 2 / 3 / 4 Date of service: ___/___/20___

Rating System: G- Good F – Fair P- Poor

1.Septic tank	Condition	4. Irrigation Area	Condition
Septic tank condition		Inline Filter check	N/A
Square junctions		Pipes Buried/Movable	
Sludge depth	mm	Sprinklers/Drippers	
Desludge required	Y N	Working (number)	
Scum depth	mm	Subsurface	
Outlet filter	N/A	Signage (number)	
2. Treatment tank		Ponding	
Air valves working		Overspray	
Check & adjust Air supply		Bore on Property	
Scum in clarifier		**5. General**	
Skimmer working	N/A	Tanks & surrounds	
Clarifier clarity	mm	Odour	
Sludge depth in Clarifier	mm	Plans in Meter Box	Y/N
Sludge return Working N/A	Y/N	**6. Comments/Recommendations**	
Chlorine Contact tank clarity	mm		
Chlorine test N/A	mg/L		
pH test			
Dissolved Oxygen test	mg/L		
Chlorine tablets remaining N/A			
Chlorine tablets added N/A			
Flow orifice check			
3.Electronic components			
Air blower working N/A	Y/N amps		
Air Filter check			
Air Pump working N/A	Y/N amps		
Irrigation pump working	Y/N amps		
Sludge return pump working N/A	Y/N amps		
UV Working	Y/N/ N/A		
Timer check			
Leads & connectors			
Circuit Breakers/Fuses			
Low Air Alarm working N/A	*A/V Y/N		
Irrigation pump alarm working	A/V Hi/Lo Y/N		
Alarm Panel	Int/Ext		

Note: * A/V = Audible/Visual
Start time:.....am/pm Finish time.....am/pm

Service technician 1:_____Signed_____
Service technician 2:_____Signed_____

Source: Information provided to IPART from Eurobodalla Shire Council, 18 September 2013.

7 Planning

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 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 have not made 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)[107].
- The residential housing activity undertaken each year in Metro Sydney, the Central Coast and the Illawarra for DPE's *Housing Monitor*[108].
- 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 councils' Local Environmental Plan (SEPP 1 variations).[109]
- 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).

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107 *Local Development Performance Monitoring*, at http://www.datareporting.planning.nsw.gov.au/ldpm-executive-summary, accessed on 26 November 2015.

108 *Housing Monitor*, at http://www.planning.nsw.gov.au/en-AU/Research-and-Demography/Research/Housing-Monitor-Reports, accessed on 26 November 2015. Currently, the following councils must report this data – Blacktown, Camden, Campbelltown, Liverpool, Penrith, Pittwater, The Hills, Warringah, Wyong, Gosford and Shoalhaven.

109 DPE, *Planning Circular PS 08-003* and *PS 08-014*, at http://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-System-Circulars, accessed on 26 November 2015.

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).[110]
- 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.[111]
- 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.

Our draft recommendation received strong support from stakeholders. There were some concerns around how the automation of data collection and upgrading of council systems would be achieved. In our view, these concerns can be addressed in implementation. We have maintained our recommendation unchanged.

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[110] Construction Business Statistics Centre – Australian Bureau of Statistics submission to the *Independent Review of the Building Professionals Act 2005* (Lambert Building Review), at http://bpb.nsw.gov.au/building-professionals-act-review-draft-report-submissions, accessed on 26 November 2015.

[111] Land & Environment Court decisions can be publicly accessed at http://www.lec.justice.nsw.gov.au/Pages/judgements/judgments.aspx, accessed on 26 November 2015.

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 are summarised in Box 7.1.

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.

Councils proposed the following solutions:

- DPE should pull out the data it needs from the ABS monthly reporting or ABS should source its information from DPE[112]
- DPE should directly source planning appeal results from the Land & Environment Court database[113]
- streamline, reduce or remove unnecessary reporting requirements[114]
- an automated system which provides 'live' data should be developed as part of the ePlanning program[115], and

112 Queanbeyan City Council submission to IPART Issues Paper, 11 August 2015 and comments from councils at Coffs Harbour workshop, 10 September 2015.

113 Ku-ring-gai Council submission to IPART Issues Paper, 14 August 2015, Attachment A, p 4.

114 Tamworth Regional Council submission to IPART Issues Paper, 21 August 2015, p 1. Leichhardt Municipal Council and Lismore City Council, questionnaire responses, August 2015.

115 Penrith City Council, Great Lakes Council and Shoalhaven City Council, questionnaire responses, August 2015. Comments from councils at Coffs Harbour workshop, 10 September 2015.

- there should be one report to DPE which includes LDPM, Affordable Rental Housing, SEPP 1 variations data, and Housing Monitor[116].

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 councils performance in delivering housing and measurable [sic]. This can only occur with a centralised reporting system.[117]

Stakeholders' responses to the recommendation in our Draft Report are set out in Box 7.2.

Box 7.2 Stakeholder response to the draft recommendation on reporting to the DPE

- There was strong support for this recommendation from councils and Local Government NSW, with strong council support for funding of system upgrades.
- However, there were also some concerns in relation to the upgrade of council systems to automate data collection, namely:
  - It may have impacts on current IT systems and resourcing.
  - It may result in DPE seeking frequent clarification on data automatically submitted.
  - Upgrade costs may be huge and DPE will not have sufficient resources to undertake the upgrades.
  - There should be provision for councils to double-check data before it is published.
  - Need to consult with councils, integrate upgrade with existing systems and provide technical support.
  - How will data, data quality and system security be managed? Eg, will data be brought into a staging area for cleansing, correcting, etc?
- Urban Taskforce Australia generally supported this recommendation, as long as system upgrades were funded through DPE, councils or Treasury allocations.
- DPE was also generally supportive of this recommendation but noted that delivery of these outcomes would be subject to agreement with ABS, funding from NSW Treasury and possibly legislative amendments.
- In relation to reporting of political donations, there was some misunderstanding by councils of their obligations around this reporting – some mistakenly thought the Electoral Commission register captured this reporting already or thought removing reporting to DPE resulted in non-disclosure.

Sources: Various submissions to IPART Draft Report and comments from stakeholders at IPART Public Hearing.

[116] Eurobodalla Shire Council, questionnaire response, August 2015. Comments from councils at Dubbo workshop, 16 September 2015.

[117] Urban Taskforce Australia submission to IPART Issues Paper, 14 August 2015, p 2.

7.1.2 Background

Duplicative reporting

Currently there is duplicative reporting to DPE in relation to the LDPM, *Housing Monitor* and Affordable Rental Housing, and to ABS in relation to the monthly *Building Approvals, Australia (cat. No. 8731.0)* publication. Council reports to DPE and ABS are summarised in **Error! Reference source not found.**.

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)

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]

[a] LDPM reports at http://www.datareporting.planning.nsw.gov.au/ldpm-executive-summary, accessed on 26 November 2015..

[b] *Housing Monitor* reports at http://www.planning.nsw.gov.au/en-AU/Research-and-Demography/Research/Housing-Monitor-Reports, accessed on 26 November 2015.

[c] Information about *State Environmental Planning Policy (Affordable Rental Housing) 2009* can be found at http://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Affordable-Rental-Housing, accessed on 26 November 2015.

[d] Construction Business Statistics Centre – Australian Bureau of Statistics submission to the *Independent Review of the Building Professionals Act 2005*, p 1, at http://bpb.nsw.gov.au/building-professionals-act-review-draft-report-submissions, accessed on 26 November 2015.

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 bench marking 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.[118]

According to 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".[119]

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, 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.[120]

Central collection and data sharing model

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 ABS and State agencies. The State can then share the data with ABS (or other users) via a Memorandum of Understanding or similar arrangement.[121]

According to 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.[122]

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118 HIA submission to IPART Issues Paper, 14 August 2015, p 1.

119 Construction Business Statistics Centre – Australian Bureau of Statistics submission to the Lambert Building Review, p 1, at http://bpb.nsw.gov.au/building-professionals-act-review-draft-report-submissions, accessed on 26 November 2015.

120 Ibid.

121 Ibid, pp 1-2.

122 Ibid.

To date, ABS has discussed this model with key NSW Government stakeholders.[123]

Implementing the model in NSW would significantly reduce the reporting burden on councils. As suggested by 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.[124]

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[125], with the majority of councils now using the system.[126] The Electronic Housing Code is an online facility for electronic lodgement of CDCs. This required an upgrade to council software systems.

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123 Ibid.

124 Emails to IPART from DPE, 13 October and 14 December 2015.

125 Information on this project can be found at http://www.ehc.nsw.gov.au/TheEHCpilotproject.aspx, accessed on 26 November 2015.

126 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.

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.

We note that councils are supportive of funding to upgrade council systems to automate data collection. However, as noted in Box 7.2, concerns were raised regarding how the system upgrade and automation of data would be managed. In particular, how data quality, data security and system integration would be achieved. Similar issues have been worked through in the implementation of the Electronic Housing Code. As suggested by Sutherland Shire Council, data may need to be brought into a staging area for checking and correcting.[127] In our view, these concerns can be addressed in implementation. It will be important for DPE to work closely with councils to address these issues and ensure the upgrade and integration with existing council systems is successful.

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 summarises these reports.

[127] Sutherland Shire Council submission to IPART Draft Report, 18 February 2016, p 1.

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.

[a] DPE, *Planning Circular PS 08-003*, p 1, at http://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-System-Circulars, accessed on 26 November 2015.

[a] Information about *State Environmental Planning Policy (Affordable Rental Housing) 2009* can be found at http://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Affordable-Rental-Housing, accessed on 26 November 2015.

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.[128] 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.[129] 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 10 councils reported more than 10 variations per quarter.[130]

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.[131]

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, it 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.

128 DPE, *Planning Circular PS 08-014*, p 1, at http://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-System-Circulars, accessed on 26 November 2015.
129 Ibid.
130 Information provided to IPART from DPE, 19 October and 14 December 2015.
131 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 to DPE under legislation or formal administrative requirements.[132] This data is not published by DPE. Under section 147(12) of the EP&A Act, councils (and DPE) are required to publish these disclosures on, or in accordance with arrangements notified on, their websites.

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. On the other hand, 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*.[133]

In 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 provided a direct link to the Electoral Commission's website where these disclosures are published.[134]

In our view, it is necessary to maintain transparency around section 147 political donations and gifts. This is not currently being achieved because DPE does 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. This transparency should be achieved through the existing obligation under section 147(12) of the EP&A Act. The informal 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.

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132 DPE's Planning Circulars on political donations disclosures, *Planning Circular PS08-009 and PS08-007*, and associated guidelines do not mandate reporting this information to DPE, at http://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-System-Circulars, accessed on 27 November 2015.

133 Where DPE is the consent authority, it publishes political donations disclosures at http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Systems/Donations-and-ift-Disclosure, accessed on 2 December 2015.

134 Disclosures are published on the NSW Electoral Commission's website at https://www.elections.nsw.gov.au/fd/disclosures/view_disclosures, accessed on 27 November 2015.

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. It can do so by enabling through the NSW Planning Portal:

- the payment of DA fees and charges
- the provision of section 149(2) information, and
- a joint application for a DA and CC.

The Planning Portal and Electronic Housing Code are already providing some zoning and development standards information currently provided in section 149(2) planning certificates.[135] However, we anticipate that issuing planning certificates via the Planning Portal would require considerable resources and development, based on Sutherland Shire Council's experience of developing an e-certificate system.[136] There are also issues with the current State cadastre which would prevent certificates being issued centrally in the short to medium term.

[135] This zoning and development standards information (ie, zone, applicable planning instruments, floor area and height ratios) can be accessed at www.planningportal.nsw.gov.au/find-property-or-council-area, accessed on 28 March 2016. The Electronic Housing Code is accessible at www.onegov.nsw.gov.au/new/agencies/ehc, accessed on 28 March 2016.

[136] Information provided to IPART by Sutherland Shire Council, 11 March 2016.

Submissions to our Draft Report raised some concerns with our draft recommendations. A number of councils were concerned they would lose revenue if councils have to maintain data but do not receive payment for planning certificates. Councils also queried who would be liable, the State or councils, for the accuracy of section 149(2) information provided through the Portal, and how data quality would be managed.[137]

Submissions to our Draft Report also indicated that there would be value in clarifying and simplifying what information should be provided in a section 149(2) certificate for conveyancing purposes, and what information should be provided under section 149(5).

Nevertheless, there is still merit in the reform of issuing section 149(2) information or 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).

However, in response to stakeholders' issues, we have revised our recommendation to include a number of interim steps before section 149(2) information or certificates can be provided through the NSW Planning Portal. We recommend DPE, as part of its review of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), clarify and simplify the information to be provided under sections 149(2) and (5). This would reduce the compliance burden on councils and improve the consistency and quality of information provided. As part of that review, DPE should also consider what section 149 information should be provided through the Planning Portal, and whether it should be in certificate form, having regard to how data quality, liability and cost recovery for the information provided can be addressed.

Also in response to stakeholder submissions to our Draft Report, we have added a new recommendation that DPE improve its procedures for providing prior notification to councils of legislative changes impacting planning certificates. This will enable councils to better manage the workload associated with such changes and minimise inaccurate information being provided to applicants.

[137] Clarence Valley submission to IPART Draft Report, 18 February 2016, p 2.

Recommendations

16 That the *Environmental Planning and Assessment Act 1979* be amended to enable information or certificates under section 149(2) of the *Environmental Planning and Assessment Act 1979* to be provided through the NSW Planning Portal.

Prior to this amendment, as part of the Department of Planning and Environment's (DPE) review of the *Environmental Planning and Assessment Regulation 2000*, DPE should:

- review section 149(2) and (5) planning certificates to clarify and simplify the information to be provided, and ensure only information relevant in the conveyancing process is provided in a section 149(2) planning certificate, and
- consider what section 149(2) information should be provided through the Planning Portal and whether that information should be provided in certificate form, having regard to:
  - data quality assurance
  - liability for accuracy of State or council information
  - State and council costs, and
  - mechanisms to recover costs.

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(2) and (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
- information or certificates under section 149(2) of the *Environmental Planning & Assessment Act 1979,* and
- joint applications for development approvals and construction certificates.

19 That DPE:

- notify councils electronically at least 21 days prior to the commencement of legislative changes that will affect the structure or content of section 149 planning certificates, and
- maintain an up-to-date, publicly available list of all legislative instruments with the potential to affect the structure or content of the certificates.

7.2.1 Stakeholder comment

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.

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 offset 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. Payment of the PRF fee should be directly to DPE. Alternatively, replace the Annual Audit Certification 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 Issues Paper, and comments from councils at Coffs Harbour and Sydney workshops.

Stakeholders' responses to the recommendation in our Draft Report are set out in Box 7.6.

Box 7.6 Stakeholder response to the draft recommendation on fees and charges, including the PRF fee, through the NSW Planning Portal

- Most councils supported the payment of fees through the Planning Portal on the basis it removed council administration of fees. Local Government NSW indicated strong support for the expanded use of the Planning Portal to include these matters. Urban Taskforce Australia was also supportive.
- A number of councils argued that there would need to be a system in place to notify councils of payments made. One council thought payment of all fees and charges related to development to the State was unworkable.
- Local Government NSW advocated for improved transparency of the PRF to ensure funds are exclusively used to support planning reforms in or for councils, including grants to councils and funding of ePlanning.
- Other councils anticipated problems in the State processing fees as a result of two sets of fee payments or subsequent adjustments to fees.

Sources: Various submissions to IPART Draft Report.

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 are summarised in Box 7.7.

Box 7.7 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.
- 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.

Stakeholders' responses to the recommendations in our Draft Report are set out in Box 7.8.

Box 7.8 Stakeholder response to the draft recommendations on planning certificates

- There was mixed support for these recommendations from councils, with three disagreeing. Councils in support welcomed more certainty, accuracy, greater efficiency and consistency around s.149 certificates.
- Local Government NSW strongly supported these recommendations, as it has partnered with DPE in the development and roll out of ePlanning for several years. Industry groups also indicated support.
- The key concerns among councils of providing s.149 certificates through the Planning Portal were:
  - Loss of revenue if DPE keeps the certificate fees while councils wear the cost of maintaining and providing the data.
  - Legal liability for the accuracy of the data dispensed via a central portal.
  - Significant set-up costs/resources needed to upgrade council systems to make data available electronically, establish data integrity and maintain systems.
  - Fragmentation of the certificate process – some information provided by Planning Portal and the rest from councils – does not provide good customer service, may lead to reduced s.149(5) certificate requests or to duplication.
- Suggestions to address concerns included that:
  - councils retain a reasonable amount of certificate fees to cover costs and the State take on legal liability, or
  - s.149(2) data be provided for information purposes only through the Planning Portal and councils continue to provide s.149 certificates.
- Some councils argued there is a long overdue need for review of s.149(2) and the associated regulations, as the certificates are full of irrelevant information. Other councils argued for a comprehensive review of the structure and information provided in s.149(2) and (5) certificates to simplify and clarify the generation of certificates.
- DPE was generally supportive of planning certificates being provided through the Planning Portal, but noted that this was not currently within the scope of the ePlanning program and would need additional funding.

Sources: Various submissions to IPART Draft Report and comments made at IPART Public Hearing.

In relation to section 149(5) certificates, there were some concerns raised by councils with specifying what information should be provided. In particular, some councils argued that:

- Councils should retain some flexibility as to what is provided under section 149(5). For example, it was suggested that one of the items specified should be "any other planning matter that the council wishes to provide".[138]
- Information provided under section 149(5) should continue to be provided without incurring any liability (unlike the section 149(2) certificate).[139]

The Riverina Eastern Regional Organisation of Councils also noted that internet access remains problematic for some people living in rural areas, so complete reliance on online solutions may exclude access for some people.[140]

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.[141] 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.

Stakeholders' responses to the recommendations in our Draft Report are set out in Box 7.9.

Box 7.9 Stakeholder response to the draft recommendation on joint DA/CC applications

- Councils provided mixed support for joint applications for DAs and CCs – with the key concern that there should be funding provided to councils to integrate online lodgement of applications with council systems.
- Urban Taskforce Australia supported joint applications, as long as they were not mandatory and could be chosen by the applicant.

Sources: Various submissions to IPART Draft Report.

138 City of Canada Bay, Shoalhaven City Council, Wingecarribee Shire Council and Tumut Shire Council, submissions to IPART Draft Report, February 2016.
139 City of Canada Bay, Port Stephens Council and Mosman Municipal Council, submissions to IPART Draft Report, February 2016.
140 Riverina Eastern Regional Organisation of Councils submission to IPART Draft Report, February 2016, p 6.
141 The Hills Shire Council, questionnaire response, August 2015.

7.2.2 Background

PRF fees

The PRF helps fund planning reforms and helps councils 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.[142]

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.[143]

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.[144] By way of contrast, councils:

- are paid $18 per payment processed[145]
- report only CCs and CDCs that attract the LSL (not all CCs and CDCs)[146], and
- do not have a similar 'audit' process to that required for the PRF[147].

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142 Information on the Planning Reform Fund is available on DPE's website at http://d.planning.nsw.gov.au/en-au/planningyourregion/fundingprograms/planningreformfund, accessed on 22 October 2015.

143 Campbelltown City Council, questionnaire response, August 2015. Councils must fill out the *Annual Audit Certification Statement* and *Annual Audit Certification Error-Omission Report* in accordance with DPE's *PRF Annual Audit Procedure*, at http://d.planning.nsw.gov.au/en-au/planningyourregion/fundingprograms/planningreformfund, accessed on 22 October 2015.

144 For information about the levy, see the Long Service Corporation's website at http://www.longservice.nsw.gov.au/bci/levy/about-the-levy/long-service-levy, accessed on 22 October 2015.

145 Information provided to IPART from the Long Service Corporation, 9 November 2015.

146 Cootamundra Shire Council submission to IPART Issues Paper, 14 August 2015, p 2.

147 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.[148] 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.[149]

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.

As noted in Box 7.6 above, a number of councils anticipated problems in the State processing DA fees through the Planning Portal as a result of two sets of fee payments or subsequent adjustments to fees. Currently DA fees are based on a genuine estimate of the costs provided by the applicant. Where a council believes the estimate is neither genuine nor accurate, it can dispute the fees.[150] A cost surveyor is then employed by council in order to determine the costs and therefore the fee payable, and the applicant is required to pay the difference in fees. Subsequent adjustment to fees makes it difficult to design an efficient online payment system that will remove the administrative burden on councils.

We have added a new recommendation in Section 5.3 to review DA fees to establish a simplified basis on which to calculate these fees to better reflect the costs to councils of processing DAs. We have also recommended that the new fee structure minimise fee disputes and subsequent adjustments, so as to facilitate a move to online payment of DA fees.

148 Information on the ePlanning program is available on DPE's website at https://www.planningportal.nsw.gov.au/understanding-planning/eplanning-program, accessed on 30 November 2015.

149 NSW Government, *A New Planning System for NSW – White Paper* (Planning White Paper), April 2013, p 52, at http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=5927, accessed on 30 November 2015.

150 *Environmental Planning and Assessment Regulation 2000*, clause 255.

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.[151]

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.[152]

The EP&A Regulation is due for automatic repeal, and will be reviewed by DPE in 2017.[153]

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).[154]

Online certificates

In contrast to NSW, Victoria offers a range of information online, provided centrally by the Department of Transport, Planning and Local Infrastructure. This is set out in Box 7.10.

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151 See https://www.planningportal.nsw.gov.au/building-or-renovating/do-i-need-approval, accessed on 28 November 2015.

152 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.

153 Information provided to IPART from DPE, 14 March 2016.

154 EP&A Regulation, clause 259.

Box 7.10 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.

Sources: See http://www.dtpli.vic.gov.au/planning/planning-schemes/get-information-about-your-planning-scheme#certificate, accessed on 5 November 2015. For more information on planning certificates, see https://www.landata.vic.gov.au/tpc_help_general.aspx, accessed on 8 January 2016.

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.[155] This electronic certificate could cover zoning and development standards information currently provided in accordance with section 149(2).

Sutherland Shire Council has been providing automated, electronic section 149(2) and (5) certificates since 2005. Most certificates are generated within one day of an application being made. This system involves significant resources. It took Sutherland approximately five years to migrate all relevant property attributes and maps into its Geographic Information Systems (GIS) to enable certificates to be electronically generated. Sutherland has a large GIS team, with one FTE staff dedicated to uploading attributes to the system and ensuring quality control, and a further two to three FTE staff assisting when major changes are made. Sutherland issues on average approximately 580 certificates each month. While there is still a need to issue some certificates manually, approximately 85% are issued as e-certificates.[156]

[155] Planning White Paper, April 2013, p 56.
[156] Information provided to IPART from Sutherland Shire Council, 11 and 17 March 2016.

In order to issue planning certificates, it is necessary to have regard to accurate lot or cadastral boundaries for properties in a council's area. The State, through Land & Property Information (LPI), maintains a cadastre. Many councils, for the purposes of issuing accurate planning certificates, also maintain their own cadastres. Over time, the State and council cadastres no longer match. Therefore, it would not be possible for the Planning Portal to issue accurate, lot specific section 149(2) information until this issue with the cadastres is addressed. LPI has a working group currently investigating the formation of one cadastre for NSW, called "Single Land Cadastre for NSW".[157]

Content of certificates

As information provided under section 149(5) is local information held by councils, it may not be possible to provide this information centrally through the Planning Portal. Currently, because the information provided under section 149(5) is not prescribed in anyway, it varies considerably from council to council.

DPE provides some guidance on what information is to be provided in section 149(2) and (5) certificates, and how this information should be presented, by providing example wording through Planning Circulars.[158] However, these Circulars do not clarify what range of information should be considered for inclusion under section 149(5). As noted above, currently councils can include advice on any relevant matters affecting the land of which it may be aware.[159]

In 2010, DPE undertook consultation on an exposure draft of amendments to the EP&A Regulation to clarify what information should be included in a section 149(2) and 149(5) certificate. These reforms did not proceed due to the commencement of the White Paper review of the planning legislation. The Law Society of NSW was supportive of the review achieving a simplified section 149(2) certificate which contained only information relevant to the conveyancing process, and for expanded use of section 149(5) to provide a wider, more detailed range of information concerning a property for development purposes.[160]

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157 Information provided to IPART from Sutherland Shire Council, 16 March 2016. The Single Land Cadastre Working Group held a workshop on 1 July 2015, see. http://www.lpi.nsw.gov.au/__data/assets/pdf_file/0019/205642/Single_Land_Cadastre_NSW_-_Summary_Outcomes_Report.pdf, accessed on 31 March 2016.

158 For example, see Planning Circulars PS 09-019, PS 09-022, PS 10-010 and PS 11-001, available at http://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-System-Circulars, accessed on 31 March 2016.

159 *Environmental Planning and Assessment Act 1979*, section 149(5).

160 Law Society of NSW, submission to Review of Section 149 Certificate Process, 12 March 2010, at http://www.lawsociety.com.au/cs/groups/public/documents/internetpolicysubmissions/066111.pdf, accessed on 27 March 2016.

Notification of changes affecting planning certificates

As raised in submissions to our Issues Paper and Draft Report, councils are not being provided with timely notification of changes affecting planning certificates. According to DPE, recent work has been undertaken to improve the situation.[161] However, it appears that further work may be necessary. Recently, changes to the *Standard Instrument – Principal Local Environmental Plan* were made by DPE.[162] The changes took effect immediately upon gazettal. Councils received email notification of the change to their general council email accounts the afternoon before it was gazetted. In many cases, notice to the relevant section of council was not received until after gazettal.[163]

We have included a new recommendation to ensure there is timely notification to councils of changes that affect section 149 planning certificates. DPE should provide electronic notification to councils at least 21 days prior to the change taking effect. Where an instrument is to take effect upon gazettal, this would require DPE to provide electronic notification 21 days prior to gazettal. Alternatively, where possible, DPE could enact changes so they do not take effect until at least 21 days after proclamation or gazettal.

This would assist councils to make necessary changes to certificates in time to comply with new legislative requirements and therefore minimise inaccurate information being provided to applicants which can expose councils to potential liability. 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. It would also avoid costly delays to applicants in obtaining certificates, as currently when councils become aware of changes they suspend the issuing of certificates until their systems can be updated to ensure certificates are accurate.[164]

161 Information provided to IPART from DPE, 2 November 2015.
162 *Standard Instrument (Local Environmental Plans) Amendment (Maps) Order 2016*, Date of commencement on publication on Legislation Website: clause 2.
163 Information provided to IPART from Sutherland Shire Council, 17 March 2016.
164 Information provided to IPART from Sutherland Shire Council, 11 March 2016

Duplicate DA/CC application forms

Some councils have separate DA and CC forms[165], whilst others have combined DA and CC forms.[166] 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. Combined DA and CC applications would be optional, not mandatory, at the convenience of the applicant.

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".[167]
- 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).[168]
- 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.[169]

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.[170]

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165 See for example Randwick City Council's website, which offers separate DA and CC forms: http://www.randwick.nsw.gov.au, accessed on 28 November 2015.

166 See for example The Hills Shire Council's website, which offers a combined DA, CC and/or other approval (eg, section 68 LG Act approvals) application form: http://www.thehills.nsw.gov.au/Council/About-The-Hills-Shire-Council/Forms-Fact-Sheets/Application-Forms, accessed on 28 November 2015.

167 EP&A Act, Part 3, Div 4 and LG Act, Ch 6, Part 2.

168 See for example, EP&A Act, s.79BA.

169 EP&A Act, Part 4, Div 5.

170 See EP&A Act, ss.55 and 56(1),(2) & (3).

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).[171]

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.[172] 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 to planning proposals (ie, LEPs), DAs and IDAs should reduce the costly delays experienced by councils and applicants.

Our draft recommendation was broadly supported by councils and industry groups, with the main qualification that DPE be properly resourced to undertake this function so the one-stop shop didn't create delays. Stakeholders also made a number of other suggestions for how to implement a one-stop shop effectively. We agree that adequate resourcing for DPE will be vital to ensure the success of the one-stop shop. We also agree with the improvements suggested by stakeholders, as detailed in Box 7.13 below. We have therefore maintained our recommendation unchanged.

Recommendation

20 That DPE manage referrals to NSW Government agencies through a 'one-stop shop' in relation to:

- planning proposals (LEPs)
- development applications (DAs), and
- integrated development assessments (IDAs).

[171] EP&A Act, s.91.
[172] Planning White Paper, April 2013, p 103.

7.3.1 Stakeholder comment

Box 7.11 sets out the range of concerns and proposed solutions councils raised in relation to amending LEPs and the Gateway process.

Box 7.11 Gateway process for LEP amendments

Council concerns:

- The process is too complex, lengthy and excessive for minor amendments to LEPs and needs to be reviewed and streamlined.
- There are significant delays caused by a lack of resources in DPE and by State agencies' input.
- Virtually any change to a planning proposal requires re-exhibition and further public consultation. Minor amendments should not require a Gateway determination and should be delegated to councils to determine.
- 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 Act should provide for circumstances where changes to planning proposals can be made without triggering the need for further community consultation.

Source: Various submissions and questionnaires to IPART Issues Paper, and comments from councils at 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 7.12.

Box 7.12 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. There are excessive delays with IDAs. There should be defined timeframes for State agencies' input or agencies should publicly report on their IDA processing times.
- State agencies won't accept and respond to IDA referrals electronically. Agencies should accept electronic referrals.
- The Rural Fire Service (RFS) is very slow to respond to DA referrals and is the agency most responsible for extensive delays. There should be timeframes on RFS for DA referrals.
- 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).
- 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.

Source: Various submissions and questionnaires to IPART Issues Paper, and comments from councils at Coffs Harbour workshop.

Stakeholders' responses to the recommendation in our Draft Report are set out in Box 7.13.

Box 7.13 Stakeholder comment on the draft recommendation on the one-stop shop

- This recommendation was broadly supported by councils and industry groups, with the main qualification that DPE be properly funded and resourced to undertake this function so the 'one-stop shop' didn't create delays.
- Councils in support agreed it would reduce costly delays, ensure coordinated, consistent advice and make the State Government more accountable.
- RMS and Bankstown Council opposed the recommendation arguing:
  - It will require substantial double-handling, and lead to duplication and inefficiency in the process and that a better approach would be continual refinement of the current process with increased delegations and standard conditions being utilised where possible.
  - It may complicate the process.
- Mosman Council disagreed with extending the one-stop shop to planning proposals (LEPs). Wollondilly and Bankstown councils disagreed with applying it to DA and IDA referrals.
- Further improvements were also suggested in this area:
  - Removing and refining unnecessary referrals, concurrence and other related approvals.
  - Introduction of standard agency conditions by DPE to reduce unnecessary and time-consuming referrals, concurrences and other approvals during the assessment process.
  - Only requiring consultation with NSW RFS on a planning proposal (LEP) once, in the general public consultation period and not prior to public exhibition as well.
  - Should impose KPIs/timeframes for agencies and enable councils to issue a determination if no response is provided within the timeframe.
  - There should be an emphasis on electronic transmittal of documents, or access to councils' documents via websites such as Civica's DA Tracking should be investigated and pursued to enhance timely referrals and responses.
  - There should be a direct contact person for each application.
  - DPE should have the authority to resolve conflicting agency advice to ensure a "whole of government" response.

Source: Various submissions to IPART Draft Report.

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 from the Minister. DPE's head office only considers significant planning proposals.[173]

In the 2014-15 financial year, approximately 85% of Gateway determination notices in relation to planning proposals (ie, 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 (ie, 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.[174]

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.

[173] Information provided to IPART from DPE, 2 November 2015.
[174] Email to IPART from DPE, 10 December 2015.

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.

Significant changes between the LEP as 'exhibited' in public consultation and 'as made' can invalidate the LEP.[175] 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.[176] 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.[177] 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.[178] 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.

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175 See *Ryan v The Minister for Planning* [2015] NSWLEC 88 (5 June 2015).
176 Planning White Paper, April 2013, p 103.
177 DPE, *Concurrence and Referrals Monitoring Report*, June 2010, at https://www.planningportal.nsw.gov.au/planning-tools/reporting, accessed on 30 November 2015.
178 Ibid, Table 4.1, p 9.

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.

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 develops 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 not essential.

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

There was a high level of support for our draft recommendation, subject to qualifications. In response to some of the issues raised by stakeholders, we anticipate different suites of standardised conditions would be developed to cater for different types of developments, different locations and specific characteristics, where possible. The standard conditions would form a base set or best practice set of conditions that would only be used where relevant or appropriate. Councils would still need to respond to site-specific issues with non-standard conditions.

The work required to develop suites of standardised conditions would be significant (involving considerable consultation), draw on existing work to standardise conditions at the council, regional and departmental level, and require ongoing resourcing. Standard conditions would need to be periodically reviewed and refined over time.

In our view, the concerns of stakeholders can be addressed and developing suites of standardised conditions remains a worthwhile pursuit. We have maintained our recommendation unchanged.

Recommendation

21 That DPE develop suites of standardised development consent conditions and streamline conditions that require consultant reports or subsequent approvals, in consultation with councils, NSW 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 7.14.

Box 7.14 Development approval process

Stakeholder concerns:

- The development approval process is overly complex and lengthy (NSW has the longest processing times of any other State). The Queensland development approval process is more streamlined and practical.
- 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.
- 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 Issues Paper and comments from councils at 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".[179]

Stakeholders' responses to the recommendation in our Draft Report are set out in Box 7.15.

[179] Urban Taskforce Australia submission to IPART Issues Paper, 14 August 2015, p 1.

Box 7.15 Stakeholder comment on the draft recommendation on standardised development consent conditions

- Most councils agreed with or provided qualified support for this recommendation. Local Government NSW and Fire and Rescue NSW provided qualified support, and Urban Taskforce Australia agreed with the recommendation subject to consultation with the property development industry.
- Councils disagreeing with the recommendation either thought it was too difficult to achieve, or disagreed with restrictions on conditions requiring consultant reports or subsequent approvals, arguing these conditions are imposed to expedite the determination of the DA.
- The main bases on which stakeholders provided qualified support were:
  - Councils should still have the option to apply standardised conditions / impose non-standard conditions for site-specific issues.
  - 'One size fits all' doesn't work for many situations.
  - A base set of standard or 'best practice' conditions should be developed that can be added to.
- Other comments and suggestions made by stakeholders included:
  - The development of standard conditions would also need ongoing review and maintenance.
  - Reducing the need for conditions requiring subsequent reports or approvals would require developers to provide a higher level of detail at DA lodgement, which in most cases they do not possess at that time.
  - It may be difficult to achieve a high degree of standardisation and this recommendation should be considered further by an expert working group.
  - Standardisation can create its own problems such as being too broad or too inflexible, eg, Standard Instrument LEP is perceived as too inflexible.
  - Standard conditions need to be workable and commercially viable.
  - The standard conditions developed should be drawn from existing council conditions.

Source: Various submissions to IPART Draft Report and comments made at IPART Public Hearing.

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.[180]

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".[181]

In our *Local Government Compliance and Enforcement – Draft Report* we recommended DPE develops (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.[182]

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.[183]

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

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[180] The Electronic Housing Code is available at https://www.onegov.nsw.gov.au/new/agencies/ehc or https://www.planningportal.nsw.gov.au/planning-tools/electronic-housing-code, accessed on 7 January 2016.

[181] Planning White Paper, April 2013, pp 120 and 187.

[182] See IPART, *Local government compliance and enforcement – Draft Report*, October 2013, p 194.

[183] *Lambert Building Review – Draft Report*, October 2015, p 189.

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 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, and Public Interest Disclosure reporting
- streamlining and simplifying processes, such as in obtaining Ministerial approvals
- removing copyright restrictions which restrict councils' ability to place development application (DA) information online and allowing councils to recover the cost of providing this information to the public, and
- removing excessive regulatory and other requirements in areas such as tendering and procurement.

Some 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.

In response to stakeholder feedback to the Draft Report we have made several new recommendations to address burdens in councils' administrative and governance functions. In the area of tendering and procurement, we have made an additional recommendation aimed at increasing council access to State managed prequalification procurement panels.

The burdens associated with complying with the GIPA Act were treated as out of scope in our Draft Report. However, submissions identified the particular burden on councils in meeting their obligations to release DAs prescribed as open access information under clause 3, schedule 1 of the *Government Information (Public Access) Regulation 2009*. Therefore, we have made two new recommendations. The first is to address the issue of council liability for copyright material in making information about DAs available and the second is to allow councils to be able to charge to make this information available.

We note the Office of Local Government (OLG) 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.[184] As noted in Section 3.3, Phase 1 of this work is currently being progressed.[185]

Other burdens raised by councils on which we have not made 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 4-year council term. Councils must regularly report to their community on progress in meeting those objectives.[186] Documents must be prepared in accordance with the statutory requirements.[187]

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[184] See Office of Local Government, *Fit for the Future - NSW Government Response to the Independent Local Government Review Panel recommendations, Local Government Acts Taskforce recommendations*, September 2014 (ILGRP and LG Acts Taskforce NSW Government Response).

[185] The Government has recently released Phase 1 of its proposed amendments for consultation: http://www.fitforthefuture.nsw.gov.au/sites/default/files/explanatory-paper-proposed-phase-1-amendments.pdf, accessed on 12 January 2016.

[186] *Local Government Act 1993*, sections 402-406, 428(2) and 428A, and *Local Government (General) Regulation 2005*, clause 217.

[187] See OLG, *Integrated Planning and Reporting Guidelines for local government in NSW*, March 2013 (IP&R Guidelines) and OLG, *Integrated Planning and Reporting Manual for local government in NSW*, March 2013 (IP&R Manual).

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 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 current review 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. It is also an opportunity to align IP&R related requirements with other ongoing reforms such as the proposed coastal management reform.[188]

In the interim, we consider that the Government could work with councils to improve their strategic planning capacity in three areas. While it is unlikely that any changes will be made prior to the start of the 2016 IP&R cycle we propose more guidance be provided about measuring performance, and the purpose, form and content of some documents throughout the 2016 cycle and in time for the start of the 2020 cycle. Our recommendations should reduce the burden of complying with IP&R and increase its value to the community. We have made 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.

[188] http://www.environment.nsw.gov.au/coasts/coastreforms.htm accessed on 15 March 2016.

Recommendations

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

23 Ahead of the 2020 IP&R cycle, 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 comment

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 Issues Paper and comments from councils at the Sydney workshop.

Box 8.2 outlines stakeholder's responses to the recommendations in our Draft Report.

Box 8.2 Stakeholder response to the Draft Report recommendations on IP&R

IP&R generally:

- Strong overall support for this recommendation.
- OLG noted that these recommendations are covered in part by Phase 1 of the LG Act review.
- The IP&R process is seen as a positive one by councils.
- Some councils raised concerns that our recommendations will end up increasing the complexity of reports, or disrupt bedded down processes.
- There was strong support for further guidance around the End of Term report and State of Environment Report.

Community Satisfaction surveys:

- Councils considered that community satisfaction surveys must be tailored to LGA specific issues.
- As many councils and ROCs are already conducting surveys care must be taken to build on this data and not duplicate council efforts.
- Some councils argued that a state-wide survey will struggle to reflect differences between councils.
- Several councils were concerned that these surveys not be used to develop league tables comparing councils against each other, rather should be used to compare a council against itself and measure quality of life.
- City of Ryde Council argued that councils should be able to opt out of surveys.

Source: Various submissions to IPART Draft Report and comments at IPART Public Hearing.

We note the concerns raised by stakeholders regarding the proposed community satisfaction surveys. OLG should work with councils in developing these surveys to avoid them being used as league tables and ensure that they are useful to councils, and do not simply duplicate surveys many councils are already undertaking.

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.[189] 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.

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.[190] 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 to both individual councils and the State.[191] 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.

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189 *Local Government Act 1993,* ss 428(2) and 428A.

190 IP&R Guidelines, p 10, and IP&R Manual, pp 14-15, and 53.

191 OLG, *Strengthening Councils and Communities: Building a new framework for measuring performance in Local Government, Discussion Paper*, November 2013.

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.

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.[192] 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.

[192] OLG, *Integrated Planning and Reporting manual for local government in NSW*, March 2013, pp 59-60.

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.[193]

Phase 1 of the Local Government Act review proposes to remove the requirement for councils to include a State of the Environment Report in their annual report every four years. Instead, it is proposed that councils report on environmental issues through their annual reports and the End of Term Report. This would harmonise the treatment of environmental issues with other objectives that are set in councils' Community Strategic Plans.[194]

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.[195]

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.[196]

193 IP&R Manual, p 136.
194 OLG, *Towards New Local Government Legislation Explanatory Paper: proposed Phase 1 amendments*, 2015, p 23.
195 Report, pp 28-30.
196 ILGRP and LG Acts Taskforce NSW Government Response, p 20.

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.[197]

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.[198]

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 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.

[197] Independent Local Government Review Panel, *Revitalising Local Government, Final Report*, October 2013, p 35.
[198] ILGRP and LG Acts Taskforce NSW Government Response, p 3.

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 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 8.4 below.

Recommendation

24 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 comment

Stakeholders identified the following burdens relating to requirements in the Code in Box 8.3.

Box 8.3 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.

Source: Various submissions to IPART Issues Paper and council comments at the Coffs Harbour and Sydney workshops.

In response to our Draft Report stakeholders generally noted support for this recommendation, arguing that the current reporting requirements are too complex, duplicative and not always relevant.[199] Additionally, some councils noted that there is a lack of consistency in how Special Schedule 7 matters such as asset condition and maintenance costs are reported.[200],[201]

DPI Water supports streamlining reporting in sewer and water fund reporting, similar to the example in Box 8.4. 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.[202]

8.2.2 Background

In response to council concerns, we note that the Financial Data Return (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.

[199] Riverina Eastern ROC and Ku-ring-gai Council submissions to IPART Draft Report, February 2016.

[200] Wyong Shire Council and Marrickville Council submissions to IPART Draft Report, February 2016.

[201] We note that the recently released draft 2015-16 Code of Accounting Practice and Financial Reporting provides additional detail on how to define asset categories, renewals, condition and condition ratings. See OLG Circular 16-04 for more details.

[202] 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. Information provided by DPE, 27 October 2015 and information provided by OLG, 4 November 2015.

Box 8.4 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 8.4 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,[203] and
- it would streamline the reporting of items in Note 2(a), as line items would be available in IP&R documents[204] and would not have to be recalculated to generate the Governance line item.

[203] *Local Government Code of Accounting Practice and Financial Reporting, Update 23,* June 2015, p C-6.

[204] 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.

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 develops criteria to determine the circumstances in which the higher threshold should apply. For councils with good practices and compliance, our 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 recommendations reduce this burden by allowing councils to delegate this function. This is consistent with the NSW Government's response to the ILGRP and LG Acts Taskforce recommendations for Fit for the Future councils.[205]

Also in response to stakeholder comments and consultation on the Draft Report, we have made a new recommendation to improve the ability of councils to make use of State Government run prequalification panels. This will reduce the cost and streamline the process of procurement for councils.

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)[206] adequately explain the approach to tendering where open tendering is difficult.

Recommendations

25 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.

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

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[205] Office of Local Government, *NSW Government Response, Independent Local Government Review Panel recommendations, Local Government Acts Taskforce recommendations*, September 2014, p 21.

[206] Independent Commission Against Corruption, *Direct negotiations, Guidelines for managing risk in direct negotiations*, May 2006.

27 That section 55(3)(g) of the *Local Government Act 1993* be amended to allow local government access to the full range of prequalification panels run by NSW Procurement.

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.

8.3.1 Stakeholder comment

Stakeholders identified a number of issues relating to tendering and procurement processes, these are summarised in Box 8.5.

Box 8.5 Stakeholder comments on local government tendering requirements and responses to the Draft Report

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.

Responses to the Draft Report – Tender limits

- Many councils again noted that the $150,000 limit was very low and that it has not been changed for many years.
- Councils argue that the proposed $250,000 limit does not go far enough and that it should be higher, either at $500,000 or proportional to council annual revenue.
- Some councils expressed concern at OLG being required to determine which councils are allowed the higher threshold. They argued that it is better to have a blanket increase to $250,000.

Responses to the Draft Report – Delegation

- Generally supported by councils and stakeholders.
- Some councils requested that the ability to delegate be extended to senior council staff and to JOs and ROCs.

Responses to the Draft Report – Prequalification Panels

- Councils noted that they were unable to use many of the existing prequalification panels that are run by NSW Procurement and which are in many cases mandatory for state agencies to use.
- Opening up access to these panels would lower the cost of procurement for councils.

Source: Various submissions to the Issues Paper and Draft Report 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.[207] The *Local Government (General) Regulation 2005* (the Regulations), and tendering guidelines published by the OLG, outline councils' obligations relating 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.[208] 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.[209]

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.[210]

Prequalification Panels

Feedback from stakeholders, to the Draft Report and at the Public Hearing noted that councils are unable to use State Government Prequalification panels for tendering activities. Prequalification panels streamline the tendering process as agencies are able to issue RFQs to panels of candidates with pre-assessed capabilities using standard terms and conditions and a simplified contracting process.

The *Public Works and Procurement Regulation 2014* which sets up these prequalification panels explicitly allows the NSW Procurement Board to enter into agreements with public bodies, including councils, to make use of state-wide procurement schemes.

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207 *Local Government Act 1993*, section 55.

208 OLG, *Tendering Guidelines for NSW Local Government*, October 2009, p 25, and *Local Government (General) Regulation 2005*, clause 163.

209 ICAC, *Guidelines for managing risks in direct negotiations,* May 2006, p 15.

210 ICAC, *Guidelines for managing risks in direct negotiations,* May 2006, Chapter 3, pp 25-30.

However, section 55(3)(g) of the *Local Government Act 1993* (LG Act) requires prequalification panels used by councils to have published maximum rates for each panel member. The panels run by NSW Procurement generally do not publish these rates.

Our recommendation in this area would amend the appropriate section of the LG Act to make it clear that procurement processes that use State run prequalification panels are covered under s55(3)(g) of the LG Act's requirements to tender even if they do not list a maximum rate. This would allow councils access to the prequalification panels and significantly speed up many procurement actions by avoiding a formal tender process in favour of using RFQs from the standing offer panel.

This recommendation is consistent with the NSW Government response to the Independent Local Government Review Panel and Local Government Acts Taskforce recommendations.[211]

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.

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[212] – 30 days

[211] Office of Local Government, *NSW Government Response, Independent Local Government Review Panel recommendations, Local Government Acts Taskforce recommendations*, September 2014, p 21.

[212] Ministerial approval is required for certain termination payments to senior staff: LG Act, s 354A LG Act.

- medium risk or medium complexity activities such as reducing the number of councillors[213] or forming a corporation[214] – 60 days, and
- high risk or complex activities such as entering into a public private partnership[215] or compulsorily acquiring land[216] – 180 days.

Recommendations

28 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 and remove those that are not justified on the basis of corruption prevention, probity or protecting the interests of the State.

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

8.4.1 Stakeholder comment

Box 8.6 sets out issues relating to Ministerial approvals identified by councils, and some proposed solutions.

Box 8.6 Stakeholder issues 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.

Source: Various submissions to IPART Issues Paper and council comments at the Coffs Harbour and Wagga Wagga workshops.

213 Ministerial approval is required for a council to reduce the number of councillors: LG Act, s 224A.

214 Ministerial consent is required for a council to form or participate in the formation of a corporation or other entity: LG Act, s 358.

215 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.

216 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.

In response to the issues raised by stakeholders, OLG supports 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.[217]

Councils supported these recommendations in our Draft Report noting that they will reduce regulatory burdens and improve timeframes. Gosford City Council considers these recommendations will help improve the level of service provided by the council and ultimately improve outcomes for customers.[218] Sutherland Shire Council noted that the requirement for Ministerial approval adds significant delays to projects,[219] while Penrith City Council stated that specifying maximum response timeframes would give the council more certainty and allow for better planning.[220]

8.4.2 Background

Examples of actions for which councils require Ministerial approvals under the *Local Government Act 1993* are set out in Box 8.7.

[217] OLG, email dated 30 October 2015.
[218] Gosford City Council submission to IPART's Draft Report, February 2016.
[219] Sutherland Shire Council submission to IPART's Draft Report, February 2016.
[220] Penrith City Council submission to IPART Draft Report, February 2016.

Box 8.7 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.

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 and amusement devices.[221] 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.

The Local Government Acts Taskforce recommended a review of all council approvals processes and their legislative framework.[222] 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. In our *Local government compliance and enforcement – Draft Report* we recommended various options for streamlining section 68 approvals,[223] and reducing the burden on both councils and business by streamlining and reducing regulation wherever possible. Recommendation 30 is consistent with our previous recommendations and the Taskforce's approach.

Recommendation

30 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.

221 Ku-ring-gai and Shoalhaven Councils, questionnaire responses, August 2015.

222 Local Government Acts Taskforce Report, pp 16 and 46-48.

223 IPART, *Local government compliance and enforcement – Draft Report*, October 2013, Recommendation 12, pp 121-138.

8.5.1 Stakeholder comment

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 8.8 sets out the burdens identified by councils, and some solutions.

Box 8.8 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.

Stakeholder comments on this recommendation in our Draft Report were generally supportive. However, councils also raised the need to balance this streamlining with some protections to ensure inappropriate activities in a specific area are not approved.[224] Warringah Council suggested a system of partnering whereby councils form local agreements to standardise approaches and agree circumstances where they will recognise another council's approval.[225]

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.[226]

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.

[224] See Holroyd City Council and Warringah Council submissions to IPART Draft Report, February 2016.

[225] Warringah Council submission to IPART's Draft Report, February 2016.

[226] 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*

Part	Activities
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.[227] Councils have discretion to determine how long an approval operates, and are responsible for enforcement of compliance with conditions.

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 are 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

[227] EP&A Act s 78A.

- abolishing or improving use of LAPs
- mutual recognition of approvals, and
- adopting best practice approaches to high-risk activities.[228]

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.[229] 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.[230]

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 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.[231]

We have also recommended that the maximum term of temporary employment be extended to four years, which is consistent with State Government rules. This will allow councils greater flexibility in hiring, for example when hiring specialist staff for specific non-ongoing projects. In response to stakeholder concerns discussed below, we note that this recommendation is not intended to cover council Senior Staff who are typically on 5-year contracts.

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228 IPART, *Local government compliance and enforcement – Draft Report*, October 2013, pp 121-138.
229 *Local Government Act 1993*, section 158.
230 IPART, *Local government compliance and enforcement – Draft Report*, October 2013, p 124.
231 For example, the Local Government (State) Award 2014.

Recommendations

31 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.

32 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 comment

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.[232] OLG has indicated that it agrees these stakeholder concerns are causing burdens.[233]

Stakeholder responses to our draft recommendations are listed in Box 8.9.

Box 8.9 Stakeholder response to our draft recommendations on Temporary Employment

- Councils strongly supported this recommendation. In general, they argued that the changes will increase workforce flexibility by removing the current levels of proscription in the legislation.
- Many stakeholders noted that the current 12 month limits needs extending as it limits their ability to hire specialist staff for specific projects.
- Other stakeholders, while supportive, raised concerns about the 4-year suggested limited. These concerns include:
  - Maintaining a 12/24 month limit for Senior Staff (who are normally on 5-year contracts).
  - Preference for a two years maximum limit.
- The United Services Union argued strongly against this recommendation stating that temporary employment should be just that, temporary. They also argued that if this recommendation were to go ahead then the ability to convert employees from temporary to permanent at level which is contained in the GSE rules should be maintained.

Source: Various submissions to IPART Draft Report.

[232] Wagga Wagga workshop, 15 September 2015; LGNSW, Issues Paper submission.
[233] OLG, email dated 30 October 2015.

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.[234] The LG Acts Taskforce recommended that the maximum term of a temporary appointment be changed from one year to two years.[235]

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

Box 8.10 What does Rule 10 say?

1. 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.

Source: *Government Sector Employment Rules 2014*, Part 2 section 10, p 7.

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*

[234] Local Government Acts Taskforce, *A New Local Government Act for NSW, Discussion paper,* April 2013, p 37.

[235] Local Government Acts Taskforce, *A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988,* October 2013, p 14.

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.[236]

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.[237]

The information in both the bi-annual and annual reports is the same.[238]

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.

Recommendation

33 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 comment

Councils raised the following issues regarding public interest disclosure:

- 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.[239]

Stakeholder responses to the recommendation proposed in our Draft Report to address these issues were generally positive. Councils considered that this recommendation would simplify and consolidate reporting.[240]

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236 *Public Interest Disclosures Act 1994* (PID Act), section 6CA.

237 PID Act, section 31.

238 *Public Interest Disclosures Regulation 2011*, section 4.

239 Councils must provide an Annual Report by the end of November each year. See the *Local Government Act 1993*, section 428(1).

240 Cootamundra Shire Council, Gosford City Council, City of Canada Bay, submissions to IPART Draft Report, February 2016.

In its response to our Issues Paper, the NSW Ombudsman's Office (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.

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.[241]

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

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[242]
- a template document to assist councils with annual reporting,[243] and
- guidelines for what information to include in the bi-annual and annual reports.[244]

The Ombudsman commented that the PID online reporting tool's data validation functions contribute to the quality of the data provided.[245]

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241 Email from the Ombudsman, 23 October 2015.

242 Ombudsman New South Wales, *PID online reporting tool User manual*, June 2012, at http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0006/5874/PID-online-reporting-tool-User-manual.PDF, last accessed on 26 October 2015.

243 Ombudsman New South Wales, *PID annual reporting requirements - Template for use by public authorities*, March 2015.

244 See http://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/public-interest-disclosures, last accessed on 26 October 2015.

245 Email from the Ombudsman, 23 October 2015.

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

The *Government Information (Public Access) Act 2009* requires public bodies (including councils) to make a variety of information available to members of the public. Councils have indicated that compliance activities under the GIPA Act are sizable and increasing, and many are unsure of their responsibilities under the Act.

In particular, councils noted that their responsibility to release DA documents proactively may be inconsistent with requirements under federal copyright legislation. This means that councils are risking potential breaches of copyright or are developing complex workarounds to satisfy both GIPA and copyright requirements. This creates an unnecessary burden for both councils and the public.

Councils also noted that the costs incurred in managing and processing open access requests for development applications (DAs) are significant, especially for older documents, which are often in archival storage. As these documents are currently prescribed open access under clause 3, Schedule 1 of the *Government Information (Public Access) Regulation 2009, c*ouncils are unable to recover the costs of retrieving documents and making them available for viewing.

We have made two new recommendations to address these issues.

The first is to address the issue of council liability for making copyright material within a DA available to the public after a decision has been made on the DA. The second is to allow councils to be able to charge to make this information available.

We note that some councils are unsure of their obligations under GIPA, and this uncertainty may result in councils undertaking unnecessary extra regulatory activities. By OLG taking a larger role in communicating GIPA-related information to councils, the burden arising from uncertainty can be reduced.

Our Draft Recommendation to change council GIPA reporting timeframes, has been deleted and the issue moved to Appendix C, following feedback from the IPC that changing council's reporting timeframes would risk the timeliness of statutory reporting to the NSW Parliament.[246]

[246] Information and Privacy Commission submission to IPART Draft Report, February 2016.

Recommendations

34 That clauses 15 and 16, schedule 3 of the Environmental Planning and Assessment Amendment Act 2014 (which adds new sub-sections 158(1A) and (4A) to the EP&A Act) be proclaimed in order to allow councils a licence or a warranty to use copyright material for the purposes of the EP&A Act (including making available development applications and related documents which may be subject to copyright).

35 That the NSW Government:

- Repeal clause 3, schedule 1 of the *Government Information (Public Access) Regulation 2009*.
- Amend the *Environmental Planning and Assessment Act 1979* (EP&A Act) to require councils to make available information and documents currently prescribed as open access information in clause 3, schedule 1 of the *Government Information (Public Access) Regulation 2009* (DA information) to a person (on request).
- Amend the EP&A Act to allow councils to charge a person making a request the efficient costs of making DA information available (after the 'submission period' under section 79(1) of the EP&A Act has expired).
- Consistent with recommendation 4, review the efficient costs to councils of making DA information available to a person (on request).
- Amend the *Environmental Planning and Assessment Regulation 2000* to set the fees for accessing DA information (after the submission period has closed) at the efficient cost to councils.

36 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 comment

Issues raised around the GIPA Act affecting councils are listed in Box 8.11.

Box 8.11 Stakeholder comments on GIPA reporting and compliance

Burdens identified by councils

- The GIPA Act's obligations for public disclosure do not override the requirement to respect copyright (see sections 6(6) and 72(2) (c) of the GIPA Act) meaning that councils need consult with copyright owners prior to release of copyright material. 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 EP&A Act allows for copyright material to appear publicly on a council's website during the DA exhibition period however the copyright exemption ends once the DA has been determined. In order to give members of the public access to these documents post-determination, councils must undertake consultation with each copyright owner. In circumstances where the consent of the copyright holder 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.
- GIPA Compliance is legally complex, onerous and time consuming. This is an issue particularly for small councils without legal expertise.

Source: Various submissions to IPART and council comments at the Coffs Harbour workshop.

In our Draft Report we noted that GIPA obligations were common across all Government agencies and therefore the issue of GIPA fees being non-cost-reflective were determined to be out of scope. Stakeholder responses at both the Public Hearing and to the Draft Report noted that Schedule 1(3) of the GIPA Regulations places specific burdens on local government. As a result of this feedback we have reversed this decision and consider this issue to be in scope. Stakeholder responses to this issue and to our Draft Report are discussed in Box 8.12.

Box 8.12 Stakeholder responses to the Draft Report

Copyright issues

- The burden of councils' obligation to release DA information to the public contradicting councils' responsibilities to not infringe the rights of copyright holders was widely referenced by councils' responses to the Draft Report.
- The current system exposes councils to potential breaches of the *Copyright Act 1968* (Cth) while attempting to fulfil their obligations under the GIPA Act.
- A number of councils requested additional support and guidance on the interaction between copyright and other legislation such as GIPA.

Cost of providing DA information to members of the public

- The volume of requests for access to DA information is very high resulting in a significant impost on council resources. One council estimated the annual cost of providing open access to DA records is in excess of $100,000.
- Since the introduction of the GIPA Act requests have grown at a rapid rate. Holroyd Council quoted applications growing from 31 in 2010 to 526 in 2015.
- Requests for access to DA information can cover information that is many decades old which is stored in off-site storage facilities which carry additional search and retrieval costs.

Guidance for councils

- IPC supports recommendation 36 and note that it has already commenced engagement with OLG to share information align priorities and develop a program of work.
- Other supporters of recommendation 36 noted that the IPC can be indecisive when clarity or support is sought on complex matters, and that additional OLG support would potentially mitigate this.

Source: Various submissions to IPART Draft Report and stakeholder comments at the Public Hearing.

8.8.2 Background and analysis

The GIPA Act requires councils to provide information disclosure and access to the public. The types of information the Act covers and the way in which this information can be released are described in Box 8.13.

Box 8.13 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 open access information it holds, free of charge, ideally via the council's website
- authorised proactive release pathway through which certain types of information can be actively and increasingly released
- informal release pathway which allows agencies to release information in response to an informal 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 that provides advice to councils and other public agencies and reports on agency compliance with the GIPA Act.

Source: Email from IPC, 22 October 2015.

Copyright

Many DAs contain copyright material such as floor plans, surveys, specialist reports and drawings. The laws surrounding the public display of copyright material which form part of a DA or other type of application are particularly complex.[247] Councils have both an obligation to make DA information publicly available as well as to not infringe copyright holder's rights. The conditions under which councils can provide this information to the public are outlined in Box 8.14.

[247] For example see IPC's FAQ to councils on copyright issues available at http://www.ipc.nsw.gov.au/copyright-and-compliance-gipa-act accessed on 14 March 2016.

Box 8.14 Under what conditions can a council provide access to copyright material?

A council may provide a member of the public with:

- one of the copies of a development application if the copyright owner has provided more than one copy of the copyright material when applying for the DA
- 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.

Source: Information and Privacy Commission, *Copyright and the GIPA Act: Frequently Asked Questions for councils*, July 2014.

Many councils are uncertain about their copyright responsibilities and potential liability when publishing DAs online. This has led some councils to minimise the time that DAs are available to be searched online – increasing the number and associated costs of requests for access to DA information for councils, as well as the cost to the community when they are unable to access DAs online.

DPE and IPC have advised that there are a number of ways to manage this copyright issue:

- Proclaim a provision in the *Environmental Planning and Assessment Amendment Act 2014* which allows for regulations to be made to require copyright holders to give a licence to the State or a council to use the copyright material for the purposes of that Act. This would allow councils to provide DAs without the risk of infringing copyright.
- through an arrangement with the Copyright Agency Limited (CAL) to pay a royalty fee for the use of copyright material, similar to the agreement that covers DAs from 2009-2013.

The proclamation of clauses 15 and 16, schedule 3 of the *Environmental Planning and Assessment Amendment Act 2014*, which adds sub-sections 158(1A) and (4A) to the EP&A Act is our preferred option. While paying a royalty fee to CAL may in part address the issue, it is not a permanent solution and the issue may re-occur in the future.

In contrast, the commencement of the listed amendment to the EP&A Act would address the issue for councils displaying copyright information when making DA information publically available. The new provisions allow regulations to be made which may require applicants for a development approval to either grant councils a licence or provide a warranty that they have the right to use the material. This means that once regulations are in place councils could place DA information online or provide it to members of the public without risking copyright infringement.

Addressing these copyright issues would enable councils to place more DAs online. It would also streamline the process of making information more openly available by minimising the amount of information that must be removed from a DA prior to it being released to the public.

Improving the ability to place DA information and documentation online should, over time, reduce the cost to councils of handling requests for access to DA information. We are aware however that the processing, scanning and online hosting of these documents still places a burden on councils. These costs are addressed by Recommendation 35.

Requests to access DA information

Under schedule 1, clause 3 of the GIPA Regulation information held by councils relating to DAs and orders are prescribed open access information.[248] Therefore, councils must make this information available free of charge. Where this information is not readily available (for example old DAs in storage) then members of the community can request access. Councils are not permitted to charge for handling requests for access to this information.

[248] *Government Information (Public Access) Regulation 2009*

Box 8.15 What is covered by Schedule 1 Clause 3 of the GIPA Regulation?

(1) Information contained in the following records (whenever created) is prescribed open access information:

(a) development applications (within the meaning of the *Environmental Planning and Assessment Act 1979*) and any associated documents received in relation to a proposed development including the following:

(i) home warranty insurance documents,

(ii) construction certificates,

(iii) occupation certificates,

(iv) structural certification documents,

(v) town planner reports,

(vi) submissions received on development applications,

(vii) heritage consultant reports,

(viii) tree inspection consultant reports,

(ix) acoustics consultant reports,

(x) land contamination consultant reports,

(b) records of decisions on development applications (including decisions made on appeal),

(c) a record that describes the general nature of the documents that the local authority decides are excluded from the operation of this clause by subclause (2).

(2) This clause does not apply to so much of the information referred to in subclause (1)(a) as consists of:

(a) the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or

(b) commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret.

(3) A local authority must keep the record referred to in subclause (1)(c).

Source: *Government Information (Public Access) Regulation 2009*.

Councils report that they are incurring significant costs in managing and processing these requests for DA information, particularly for older DAs stretching back to the 1940s and 50s where it may take significant time to retrieve files from archives.[249]

[249] Information provided to IPART, Holroyd City Council & Pittwater Council, 18 February 2016.

As noted above, submissions to the Draft Report indicate that the majority of requests councils receive are for open access information such as DA information for which no fees are payable. For example, in 2014-15 Port Stephens Council processed 376 open access information requests and only 11 formal GIPA requests.[250] Other councils reported similar figures for open access information requests with the Blue Mountains City Council estimating they received over 700 in 2014-15 costing in excess of $100,000 to process and Pittwater Council estimating they received between 300-400.[251]

It is important to note that these requests are not concerning DAs under active consideration by councils, but rather past DA decisions. Discussions with councils indicate that it is often new or prospective owners who are seeking this information for private use.[252]

Allowing councils to charge the efficient cost of providing these documents reduces the burdens on councils in two ways. Firstly, it will allow them to recover the efficient cost of making this information readily available to the public. Secondly, it will reduce the number of spurious or onerous requests for access, partly because more information will be online but also because applicants will now bear the efficient cost of providing them the relevant information.

Current NSW Government policy is that this DA information is available free of charge. If this policy is maintained or the fee is capped below cost recovery, then it should reimburse councils the shortfall, consistent with Recommendation 6.

Moving the requirement to make DA information from the GIPA Act to the EP&A Act serves two purposes. Firstly, it consolidates the requirements around the display of DA information in a single piece of legislation. Secondly, the EP&A Regulation has existing provisions allowing councils to charge for providing copies of information held by councils and for the Government to determine the maximum prices which can be charged.[253]

[250] Port Stephens Council submission to IPART Draft Report, February 2016.

[251] Blue Mountains City Council submission to IPART Draft Report, February 2016; Pittwater Council, IPART Public Hearing, 8 February 2016, Transcript, p 21.

[252] Information provided to IPART by Holroyd City Council and Pittwater Council, 18 February 2016.

[253] See Division 2 EP&A Regulation 2000.

Role of the Information and Privacy Commissioner

The IPC is an independent statutory authority responsible for administering NSW's privacy and government information access legislation.

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.[254]

The IPC has also recently released its first compliance report on GIPA reporting[255] and releases annual reports on GIPA performance.[256]

[254] IPC, Discussion paper submission, p 1. The IPC also provides guidance for the public at http://www.ipc.nsw.gov.au/resources-public and for agencies (including councils) at http://www.ipc.nsw.gov.au/resources-public-sector-agencies-0. Accessed on 27 October 2015.

[255] IPC, *Universities' Compliance with the GIPA Act: Audit Report 2012,* August 2015.

[256] IPC, *Report on the Operation of the Government Information (Public Access) Act 2009, 2013–2014.*

9 Building and construction

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.[257] The *Independent Review of the Building Professionals Act 2005 - Draft report* (Lambert Building Review Draft Report) was released for public comment in August 2015 and the Final Report is currently being considered by the Government. The Lambert Building Review 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 recommendations and the draft 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.

[257] Lambert, M. *Independent Review of the Building Professionals Act 2005 - Draft report,* August 2015, p 11.

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'[258] 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, at the workshops we held with councils and in submissions to our Draft Report. 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."[259] 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 finding in this section reflects our support for the Lambert Building Review's draft recommendations.

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

[258] *Independent Commission Against Corruption Act 1988*, section 3(1)(k1).

[259] Lambert, M. *Independent Review of the Building Professionals Act 2005 - Draft report,* August 2015, p 14.

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.

- 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).

Source: Lambert, M. *Independent Review of the Building Professionals Act 2005 - Draft report*, August 2015.

9.1.2 Stakeholder comment

The issues raised by stakeholders in this area are quite broad, and are summarised by sub-topic in Box 9.2.

Box 9.2 Summary of burdens identified by councils

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 to IPART Issues Paper, questionnaire responses, and council comments at the Sydney, Wagga Wagga, Coffs Harbour and Dubbo workshops.

Stakeholders' responses to this issue in our Draft Report are summarised in Box 9.3.

Box 9.3 Stakeholder response to our Draft Report

- This area is a growth area for council burdens, particularly the management of Complying Development Certificates (CDCs).
- The BPB is seen as a weak regulator, so increasing its powers and resourcing should be useful in improving its performance.
- Other stakeholders noted that the Lambert review have significant staffing implications for councils and that it would be better to remove individual council certification rather than creating a regional certification category.

Source: Various submissions to IPART Draft Report.

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. Councils 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 rates that recover costs 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.

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.

9.2.1 Background and Stakeholder comment

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.[260]

However, the Building Professionals Board (BPB) has noted that councils are free to set their own fees at a level that 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.[261] Other councils, such as The Hills Shire Council and Wagga Wagga City Council, have a fee quote estimation facility available on their website.[262]

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 to provide guidance to members of the public of what the service should cost.

Including a note about travel charges in the indicative fee schedule would serve to inform regional and rural customers and councils that it is acceptable to charge for travel costs associated with conducting site inspections, and that these can vary from client to client.

LGNSW noted its support for our finding in this area arguing that not all councils are aware that they can include travel costs to allow full cost recovery.[263]

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260 Wagga Wagga workshop, 15 September 2015; Wentworth Council Shire, submission to IPART Issues Paper, August 2015, p 1.

261 Bourke Shire Council, *Fees and Charges 2015/16,* p 9.

262 Seehttp://www.thehills.nsw.gov.au/Building/Development-Approvals/Building-Certification-Services/Building-Certification-Online-Fee-Estimates accessed on 1 December 2015 and https://eservices.wagga.nsw.gov.au/T1PRWeb/eProperty/P1/WWCustom/DACalc.aspx?r=WW.P1.WEBGUEST&f=WW.P1.EPR.DACALC.VIW accessed on 30 March 2016.

263 LGNSW submission to IPART Draft Report, February 2016.

In the Draft Report, we made a draft recommendation about the BPB including travel costs in its indicative fee schedule. We have not retained this recommendation as the BPB argued that accurately calculating travel costs was not possible given the range of variables.[264]

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 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.

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.

Recommendation

37 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.

[264] BPB submission to IPART Draft Report, February 2016.

9.3.1 Stakeholder comment

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.

Box 9.4 Stakeholder identified burdens

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 to IPART Issues Paper and questionnaire responses.

Stakeholders responses to this recommendation in our Draft Report are discussed in Box 9.5.

Box 9.5 Stakeholder response to our draft recommendation

- Standardising an online system will make the administration of this function much easier.
- Centralised recording and reporting of fire requirements is a sensible reform.
- Supported assuming there is no additional burden on councils.
- Supported, but there is a need for consultation with councils as to the system's final form. Particularly over issues such as access and responsibility for data in system.
- Questions whether the introduction of an online system means that councils won't be able to charge an administration fee, part of which covers other fire safety related activities and the cost of the system itself.

Source: Various submissions to IPART Draft Report.

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.[265] 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 widely consult with councils when considering 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. The system should ensure councils have the ability to determine the accuracy of information on the certificates. 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.

[265] Lambert, M. *Independent Review of the Building Professionals Act 2005 - Draft report,* August 2015, p 207.

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)[266] 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.[267]

Separately, draft recommendation 17 of IPART's *Local government compliance and enforcement – Draft Report* recommended the online submission of these statements.

By maintaining them online, the manuals 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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[266] This covers commercial buildings and multi-resident buildings such as apartment blocks.

[267] Lambert, M. *Independent Review of the Building Professionals Act 2005 - Draft report,* August 2015, p 207.

Our 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.

Recommendations

38 That the *Environmental Planning and Assessment Regulation 2000* be amended to clarify what constitutes a 'significant fire safety issue'.

39 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 comment

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'.[268] 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.[269]

FRNSW supports this change, however it also notes that caution is required in relation to how much discretion is provided to certifiers as opposed to government bodies. Nevertheless, it argues that having a gradation of what the significant fire safety issues are would be very useful and allow flexibility in applying penalties or working with building owners.[270]

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.[271] In its submission to this review, The Hills Shire Council noted that this requirement creates unnecessary delays when an immediate

268 *Environmental Planning and Assessment Regulation 2000*, clause 129D(1)(c).
269 Shoalhaven City Council, questionnaire response, August 2015.
270 FRNSW, IPART Public Hearing, 8 February 2016, Transcript p 42.
271 *Environmental Planning and Assessment Act 1979*, section 121ZD.

response could be required. It suggests that this power be delegated to the General Manager, who could inform the full council meeting when appropriate.[272]

Bankstown City Council supported our draft recommendation noting it would ensure important fire safety issues can be addressed in a timely and efficient manner rather than waiting for the next council meeting.[273]

FRNSW also supports this change, arguing that there is no value in requiring these orders to go to full council as the councillors would be relying on their staff's expertise about the issue.[274] 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.[275]

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.[276] 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.[277]

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272 The Hills Shire Council, questionnaire response, August 2015.
273 Bankstown City Council submission to IPART Draft Report, February 2016.
274 Information provided to IPART by Fire & Rescue NSW, 2 November 2015.
275 DPE, *New fire safety requirements when development affects an existing building,* July 2014, p 1 at http://localgroup.com.au/assets/documents/Circular.pdf, accessed 8 January 2016.
276 Lambert, M. *Independent Review of the Building Professionals Act 2005 - Draft report,* August 2015, p 208.
277 Lambert, M. *Independent Review of the Building Professionals Act 2005 - Draft report,* August 2015, p 190.

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.

10 Public land and infrastructure

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 trailers.

Our 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 have not made 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.[278]

These proposals would require legislative change through proposed new Crown lands legislation.

Our 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.

Recommendations

40 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, and
   - where the transfer is agreed by the council, including where this agreement is conditional on change of land classification.

41 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 comment

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.

[278] See NSW Government, *Response to Crown Land Legislation White Paper: Summary of Issues and Government Response*, October 2015, http://www.lpma.nsw.gov.au/__data/assets/pdf_file/0004/206680/response-to-crown-lands-legislation-white-paper.pdf, accessed on 18 November 2015; and NSW Government, *Crown Lands for the Future: Crown Lands Management Review Summary and Government Response*, 2013, http://www.lpma.nsw.gov.au/__data/assets/pdf_file/0010/196435/Crown_Lands_for_the_Future_accessible.pdf, accessed on 18 November 2015.

Box 10.1 Stakeholder comments on Crown reserves reporting and management and on our draft recommendations

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.
- 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.

Stakeholder comments on the Draft Report

- The transfer of Crown reserves with local interests to councils is supported but it should only take place with council agreement. The forced transfer of Crown lands would add to the burden on councils and would be a form of cost-shifting.
- The transfer of Crown reserves with local interests to councils should include provision of adequate long term funding to support its management.
- In many instances the management of Crown reserves is aligned with Council's core business. It therefore logically follows that this land be subject to the LG Act.
- The administration of lands under the LG Act will result in a significant increase in reporting and compliance relative to the CL Act.

Source: Various submissions to IPART Issues Paper and Draft Report, 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.[279] While similar suggestions were made by councils in their submissions to the Issues Paper (as outlined in the Box above) councils at our workshops argued for more substantial reform, including:[280]

- 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.

In responding to our draft recommendations, stakeholders identified that the management of some Crown reserves involves significant cost and liability that should not be transferred to councils without appropriate funding.[281] Many argued that a transfer should only occur with council's agreement.[282] We agree that the transfer of Crown reserves, and any funding arrangements to support a transfer, should be negotiated with councils and subject to their agreement. For some Crown reserves that may not otherwise be attractive to councils, it may also be appropriate to consider changing the classification of the land as a part of the agreement to transfer.

Blue Mountains City Council considers that the provisions of the LG Act relating to land management are more onerous than the requirements of the CL Act and that therefore the transfer of Crown reserves to councils and the management of Crown reserves under the LG Act will result in additional compliance and reporting burdens.[283] This issue is discussed further below.

10.1.2 Background and analysis

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

[279] Department of Primary Industries submission to IPART Issues Paper, August 2015.
[280] Coffs Harbour Wagga Wagga and Dubbo workshops, 10, 15 and 16 September 2015.
[281] Gosford City Council and Leichhardt Municipal Council submissions to IPART Draft Report, February 2016.
[282] Eurobodalla Shire Council, The Hills Shire Council and IPWEA submissions to IPART Draft Report, February 2016.
[283] Blue Mountains City Council submission to IPART Draft Report, February 2016.

should bring all land managed by councils under the regulatory framework provided by the LG Act.

This will minimise burdens arising from councils having to comply with different regulatory frameworks. However, there is the potential for these recommendations to have a net cost under the existing LG Act provisions relating management of community land, particularly the requirement for councils to prepare a plan of management for community land.[284] In contrast, not all Crown reserves are required to have a plan of management.[285] It is possible that the costs of developing plans of management for Crown reserves (that are transferred to councils as community land or that are managed under the LG Act) are higher than the potential administrative cost savings (from not providing an annual report for each reserve and reduced delays associated with Ministerial approvals for licences and leases).

We note that the Local Government Acts Taskforce (LG Acts Taskforce) recommended various changes to the land management arrangements under the LG Act (see section 10.3). As discussed in section 3.3, the NSW Government has commenced a program of reform to modernise the LG Act in response to the recommendations of the LG Acts Taskforce and the Independent Local Government Review Panel.[286]

These reforms to the LG Act will need to simplify the arrangements for managing community land and reduce associated costs to ensure that the transfer and management of Crown reserves under the LG Act, as recommended by the NSW Crown Lands Management Review, does not have a net cost to councils. 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.

284 *Local Government Act 1993*, section 36.

285 Department of Primary Industries – Lands, *Reserve Trusts Handbook*, p 45.

286 Office of Local Government, *Towards New Local Government Legislation Explanatory Paper: proposed* Phase 1 *amendments*, 2015.

Both types of road closure occur under a process prescribed by 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.

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.[287]

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.

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 for DPI Lands.[288] 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.

The Crown road closure process also requires the resources of other agencies, including the Office of Environment and Heritage and Department of Primary Industries (Fisheries and Aquaculture). Therefore, to reduce the backlog of applications, these agencies will also require additional resources so they can negotiate resolutions to objections and respond to Crown road closure applications.

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[287] Department of Primary Industries Lands, *Council Road Closures Frequently Asked Questions*, September 2015.

[288] Department of Primary Industries Lands *Purchasing Crown Roads – Facts Sheet*, July 2015.

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.

Recommendations

42 That the NSW Government streamline the statutory process for closing Crown roads, including the arrangements for advertising road closure applications.

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

10.2.1 Stakeholder comment

The burdens identified by councils in relation to road closures, measures to address these burdens, and stakeholder comments on our draft recommendations, are summarised in Box 10.2.

Box 10.2 Summary of stakeholder comments on Crown road closures and our draft recommendations

Crown road closures

- 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.

Stakeholder comments on the Draft Report

- The current process has resulted in a cost shift to council to undertake the necessary notification and engagement process, while also requiring a fee to be paid to DPI Lands for processing the application.
- The current process is burdensome and complex. DPI Lands has made some recent progress in attending to backlogs, however applications take an inordinate amount of time to be processed. Draft recommendations are strongly supported.

Source: Various submissions to IPART Issues Paper and Draft Report, and comments from councils at the 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.[289] While some councils support the current arrangements for councils to more closely manage applications,[290] many councils argue the increased administration burden on councils for managing Crown road closure processes that are the responsibility of the State is an example of cost shifting that should be reimbursed.[291] The issue of cost shifting is discussed more broadly in Chapter 5.

Stakeholders strongly supported our draft recommendations to streamline the Crown road closure process and reduce the backlog of road closure applications.[292] Camden Council considered that while a streamlined process is appropriate for uncontested road closure applications, more complex and contested applications will require a longer period of time to complete.[293]

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:[294]

- 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.

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289 Information provided to IPART from DPI Lands, 29 October 2015.
290 For example Randwick City Council submission to IPART Draft Report, February 2016.
291 Cooma Monaro Shire Council, Fairfield City Council, Blayney Shire Council submissions to IPART Draft Report, February 2016.
292 For example, Hunters Hill Council, Leichhardt Municipal Council, SHOROC, Queanbeyan City Council, submissions to IPART Draft Report, February 2016.
293 Camden Council submission to IPART Draft Report, February 2016.
294 Department of Primary Industries Lands *Purchasing Crown Roads – Facts Sheet*, July 2015.

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.[295] This is one area of the road closure process that could be considered for streamlining.

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.

The LG Acts Taskforce considered similar issues with PoMs to those stakeholders raised in this review. It recommended various changes to the public land management arrangements under the LG Act, including to PoMs.[296] The NSW Government has commenced a program of reform to modernise the LG Act in response to the recommendations of the LG Acts Taskforce and the Independent Local Government Review Panel.[297]

295 *Environmental Planning and Assessment Regulation 2000*, cl 89(3).

296 Local Government Acts Taskforce, *A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*, October 2013 (Taskforce Final Report), pp 45-46.

297 Office of Local Government, *Towards New Local Government Legislation Explanatory Paper: proposed* Phase 1 *amendments*, 2015.

The proposed transfer and management of Crown reserves under the LG Act (as discussed in section 10.1) will increase the amount of land subject to the PoM requirements that stakeholders have identified as excessive and burdensome. This further highlights the importance of streamlining the requirements for public land management under the LG Act.

As part of the NSW Government's amendments to the LG Act, 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.

Recommendation

44 That the NSW Government streamline the provisions of the *Local Government Act 1993* relating to plans of management for community land to enable councils 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.[298]
- PoMs are not relevant or accessible for the community. They do not read them.[299]
- The processing for drafting and consulting on a PoM is onerous and costly. It can extend for a year or more.[300]
- 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.[301]

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 the community.[302] This suggestion is consistent with the LG Acts Taskforce's recommendations.[303]

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298 Sydney workshop, 8 October 2015; Camden Council and Orange City Council submissions to IPART Draft Report, February 2016.
299 Wagga Wagga workshop, 15 September 2015.
300 Albury Council and Maitland City Council submissions to IPART Issues Paper, August 2015.
301 Maitland Council submission to IPART Issues Paper, August 2015; Parramatta City Council, submission to IPART Draft Report, February 2016.
302 Maitland Council submission to IPART Issues Paper, August 2015 and Wagga Wagga workshop, 15 September 2015.
303 Taskforce Final Report, p 46.

Councils responding to our draft recommendation expressed strong support for streamlining consultation with their communities on PoMs to align with IP&R processes, however they highlighted the need for flexibility. They argued that consultation requirements should be flexible to allow councils to appropriately engage with their community according to the action being taken.[304]

Some councils did not agree with our draft recommendation, arguing that current consultation provisions for PoM are appropriate.[305] We have amended our recommendation to provide the flexibility for councils to align their community consultation on the management of community land with IP&R processes where appropriate.

10.3.2 Background

Under the LG Act, councils must prepare a PoM for community land.[306] 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:[307]

- 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.

304 Bankstown City Council, Gosford City Council, Penrith City Council, Wollongong City Council, submissions to IPART Draft Report, February 2016.
305 Holroyd City Council submission to IPART Draft Report, February 2016.
306 *Local Government Act 1993* section 36(1).
307 *Local Government Act 1993* section 36(3).

The LG Act prescribes the consultative process by which each PoM must be made.[308] 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.

The LG Acts Taskforce made a range of recommendations relating to councils' management of council-owned public land, including:[309]

- councils be required to strategically manage council-owned public land as assets through the IP&R framework, and
- ceasing the need for separate plans of management for community land to be prepared and maintained, and in lieu, utilise the Asset Management Planning and Delivery Program of the IP&R process.

The NSW Government has broadly supported the LG Acts Taskforce's recommendations that are being implemented through phased amendments to the LG Act.

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 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.

Recently the NHVR has engaged more closely with councils. In 2015 the NHVR consulted councils about the access permit systems and processes, and it has a program of permit and system improvements for 2016, including a new portal for road managers.[310] The NHVR and RMS have also been assisting councils to address access issues on a bulk basis for certain types of heavy vehicles to reduce the need for individual access requests.[311]

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308 *Local Government Act 1993* sections 38 to 40A.

309 Taskforce Final Report, p 46.

310 National Heavy Vehicle Regulator, *Local government update*, 22December 2015, at http://www.vision6.com.au/em/message/email/view.php?id=1161034&u=57453, accessed on 23 March 2016.

311 National Heavy Vehicle Regulator, *Approved Guidelines for Granting Access,* February 2014, Clause 4.1 and RMS, IPART Public Hearing, 8 February 2016, Transcript p 67.

RMS and Transport for NSW have provided a range of support for councils in the interim, including:[312]

- developing a Road Manager Toolkit which covers the process of receiving and responding to access requests[313]
- establishing a sub-committee on freight connectivity, and
- attending forums and meetings with councils to provide advice on specific route requests.

Transport for NSW has funded and conducted a series of workshops with councils on the Performance Based Standards Route Assessment Tool developed by the Australian Road Research Board.[314]

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 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.

The importance of this issue will diminish over time as more pre-approved routes are established, however past analysis by IPART indicates that additional interim measures by RMS to assist councils in this area would be of substantial benefit.

Recommendation

45 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 comment

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.[315] 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.

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312 RMS submission to IPART Draft Report, February 2016.
313 See http://www.rms.nsw.gov.au/business-industry/partners-suppliers/lgr/other-information/heavy-vehicles/road-manager-tool-kit.html accessed on 2 December 2015.
314 RMS submission to IPART Draft Report, February 2016.
315 Albury City Council submission to IPART Issues Paper, August 2015.

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.[316]

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.[317]

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.[318] Submissions also recognised the need for consistency between councils, which would be enhanced by appropriate guidance from RMS.[319]

In responding to our draft recommendation, councils continued to identify that the National Heavy Vehicle Regulation is not working well in NSW.[320] They strongly supported our recommendation that RMS provide greater support to councils to develop their competency to conduct route access assessments.

RMS identified that it has already provided significant support to councils and that it will take direction from the NHVR, as the body responsible for providing support for all road managers, on how it can provide further support that is complementary to the NHVR's AccessCONNECT program.[321] It also identified that it may be able to work more strategically through Joint Organisations to provide support on road access issues.[322]

316 Ibid.

317 Australian Logistics Council submission to IPART, *Local government compliance and enforcement – Draft Report,* July 2014.

318 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, July 2014, in relation to IPART *Local government compliance and enforcement – Draft Report,* October 2013.

319 Tweed Shire Council submission to IPART, June 2014, in relation to IPART *Local government compliance and enforcement – Draft Report,* October 2013.

320 Riverina Eastern Regional Organisation of Councils and Cootamundra Shire Council submissions to IPART Draft Report, February 2016.

321 RMS submission to IPART Draft Report, February 2016.

322 RMS, IPART Public Hearing, 8 February 2016, Transcript p 66.

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.[323] 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.

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.[324] This has meant that local councils must conduct access request assessments, without the planned support infrastructure from the NHVR. Although the NHVR has recently engaged more closely with councils, without having ready access to the appropriate skills and expertise from the NHVR has led to substantial burdens for councils.

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.[325]

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[323] NHVR, *One regulator, one rule book rolls out today,* 10 February 2014, available at https://www.nhvr.gov.au/news/2014/02/10/one-regulator-one-rule-book-rolls-out-today accessed on 1 December 2015.

[324] NHVR, *NSW to also provide permit processing assistance,* Media Release, 21 February 2014, available online at https://www.nhvr.gov.au/news/2014/02/21/new-south-wales-to-also-provide-permit-processing-assistance accessed on 2 December 2015.

[325] IPART, *Local government compliance and enforcement – Draft Report,* October 2013, p 266.

10.5 Impounding unattended boat trailers, caravans and other trailers

The long term on-street parking of boat trailers, caravans and other 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.[326]

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.[327] However, these new powers do not extend to other types of trailers and caravans which are causing similar issues. This leaves a gap in council enforcement powers. Our recommendation would clarify these powers by expanding the recently introduced amendments to the Act to include other types of trailers.

Recommendation

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

10.5.1 Stakeholder comment

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.[328] Attendees at the Coffs Harbour workshop stated that the lack of definition means that abandonment is too difficult to prove, making the Act unworkable.[329]

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.[330]

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326 Transport for NSW, *Boat trailer Working Group – Discussion report and options paper,* March 2013, p 3.

327 *Impounding Amendment (Unattended Boat Trailers) Act 2015*, Schedule 1. This amendment had not commenced as at 23 March 2016.

328 Canada Bay City Council, questionnaire response, August 2015.

329 Coffs Harbour workshop, 10 September 2015.

330 North Sydney Council submission to IPART, *Local government compliance and enforcement – Draft Report,* July 2014.

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.

Stakeholders expressed strong support for our draft recommendation to treat caravans and trailers in the same way as boat trailers when considering whether they are unattended for the purposes of the Act.[331] RMS noted that this will enhance councils' ability to move obstructing vehicles in a timely manner and improve traffic flow in affected streets, particularly in high density areas.[332]

However, some stakeholders consider that the definition of 'unattended' in the *Impounding Amendment (Unattended Boat Trailers) Act 2015* is not strong enough for councils to take effective enforcement action.[333] We note this definition is a recent amendment that arose from the work of a Transport for NSW Boat Trailer Working Group and consider its effectiveness should be tested and evaluated.

331 North Sydney Council, Parramatta City Council, Burwood Council, submissions to IPART Draft Report, February 2016.

332 RMS submission to IPART Draft Report, February 2016.

333 Fairfield City Council, Mosman Council, The Hills Shire Council and Ku-ring-gai Council submissions to IPART Draft Report, February 2016.

11 Animal control

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 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 have not made 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).[334] 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.[335] 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
- difficulty in enforcing penalty notices, resulting in wasted time and ineffective regulation

[334] *Companion Animals Act 1998* (CA Act), section 74.
[335] *Companion Animals Regulation 2008* (CA Regulation), clauses 7, 13 & 20.

- 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.[336] This is currently being undertaken by OLG. The redesigned Register and registration system will implement one-step online registration.[337] According to OLG, the one-step registration process will be in place by 1 July 2016. However, the new register may take longer to implement.[338]

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.

There was significant support from councils and Local Government NSW for our draft recommendations. We have maintained our recommendations unchanged.

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[336] NSW Government, *Government Response to Companion Animals Taskforce Recommendations*, February 2014, at https://www.olg.nsw.gov.au/sites/default/files/Government-response-to-Companion-Animals-Taskforce-recommendations.pdf, accessed on 4 December 2015.

[337] NSW Premier, *Cat and Dog Registration Incentives to Encourage Responsible Pet Ownership*, 21 March 2015, at http://nsw.liberal.org.au/cat-and-dog-registration-incentives-to-encourage-responsible-pet-ownership/, accessed on 4 December 2015.

[338] Office of Local Government, IPART Public Hearing, 8 February 2016, Transcript, pp 74-75.

Recommendations

47 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 (ie, 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.

48 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.

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.

Box 11.1 The Register and registration process

The Register - council concerns:

- 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:

- 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 Issues Paper and comments from councils at the 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.

Box 11.2 Reporting on animals in pounds (cats and dogs survey)

Council concerns:

- Poorly coordinated, poorly designed, overly prescriptive and unduly costly reporting. The reporting process would benefit from templates and technologies that make the upload of requested data by councils easier and more efficient.
- 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.
- Should include data on how many dogs and cats entering council facilities were microchipped if want to measure the success of mandatory microchipping.
- Monthly reports are too frequent - reduce reporting frequency to annually.

Sources: Various submissions and questionnaires to IPART Issues Paper, 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.

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. Provide greater funding to councils (ie, recognise as a Community Service Obligation (CSO) and increase contribution to councils).
- 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. 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 Issues Paper, and comments from councils at the Wagga Wagga workshop.

Box 11.4 outlines stakeholders' responses to the recommendations in our Draft Report.

Box 11.4 Stakeholder response to the draft recommendations on companion animals

Updated Register and one-step registration process

- There was strong support for this recommendation, with recognition that the current paper-based system is time-consuming and resource intensive, and that the Register's search functions, user access and portability need to be upgraded.
- However, some stakeholders raised the following concerns with the new one-step registration process and Register functionality:
  - There is a need to ensure privacy protection of pet owners' personal details and for greater security with a move to a more accessible online registration system.
  - There should be audit capabilities to enable councils to determine ownership at a particular point in time.
  - There may need to be a verification process in relation to change of ownership, change of address and other details.
  - The one-step process should recognise any applicable discounts to owners or concessions to disadvantaged citizens.
  - The new system must be able to accommodate lifetime registration at a later date when desexing has occurred.

Unique identification information

- There was strong support for this recommendation.
- Stakeholders had varying views on what was the most appropriate identification information eg, date of birth, driver's licence or photograph identification documents such as passports, health care, student or pension cards, etc.
- Some stakeholders were concerned about the potential for privacy breaches or owners deliberately changing data to evade fines or prosecution.

Sources: Various submissions to IPART Draft Report and comments from stakeholders at IPART Public Hearing.

11.1.2 Background

The Register and registration process

In 2013, IPART recommended in our *Local Government Compliance & Enforcement - Draft Report*[339] 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.[340]
- Develop online companion animals registration including provision to change details of registration online.[341]
- 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.[342]

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."[343]

As discussed above, the NSW Government has already committed to undertake a comprehensive review and redesign of the Register and registration system. The new one-step registration process is to be in place by 1 July 2016, but the new register may take longer to implement.[344] Given this commitment, we have focused our recommendations on ensuring the new Register and registration process minimises unnecessary burdens on councils.

In addition to our recommendations, we consider in time there may be value in providing pet owners the facility to change their details online 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.[345] However, providing this facility would need to be subject

339 IPART, *Local government compliance & enforcement - Draft Report*, October 2013.
340 Ibid, Draft Recommendation 32, p 272.
341 Ibid, Draft Recommendation 33, p 273.
342 Ibid, Draft Recommendation 35, p 278.
343 NSW Premier, *Cat and Dog Registration Incentives to Encourage Responsible Pet Ownership*, 21 March 2015, at http://nsw.liberal.org.au/cat-and-dog-registration-incentives-to-encourage-responsible-pet-ownership/, accessed on 4 December 2015.
344 Office of Local Government, IPART Public Hearing, 8 February 2016, Transcript pp 74-75.
345 For a full list of licences and other services that can be undertaken through Service NSW, see http://www.service.nsw.gov.au/, accessed on 7 December 2015.

to the cost of using Service NSW and the ability to interface with the new Register.

As noted in Box 11.4 above, a number of stakeholders raised concerns that the new online one-step registration process and inclusion of pet owner's personal details could lead to privacy breaches. There were also concerns it could affect existing registration fee discounts for owners of desexed animals, or concessions given to disadvantaged owners. In our view, it should be possible to address these concerns in the Register design. For example, certain users (ie, pet owners or vets) could be enabled to send data to the Register and other users (ie, councils and OLG) could have access to the entire Register.

In relation to discounted registration fees, it may be possible to combine microchipping, registration and desexing at the same time. One council noted that new vet data is indicating there are no problems with desexing animals younger than six months old, so it may be possible to microchip, register and desex at three months.[346] Alternatively, it may be possible to design a rebate (rather than discount) system, or to give authority to council officers to waive registration fees in defined circumstances.

Another concern was that pet owners could deliberately change their personal details in the Register to evade fines or prosecution. In our view, it should be possible to minimise this risk through the Register design and verification procedures. Falsifying or modifying details to avoid fines or prosecution should be difficult to do as:

- personal details will be linked to identifying data such as a drivers licence number, and
- the Register could be designed to track or retain a record of when and how an owner's details are changed.

The new Register also offers opportunities to further reduce current reporting burdens on councils, as discussed below.

[346] Tumut Shire Council submission to IPART Draft Report, 29 January 2016.

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.[347] 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.[348] 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'.[349]

Presently, councils have to manually enter relevant data into a one page spreadsheet in the Register.[350] Under OLG's *Guideline on the Exercise of Functions under the Companion Animals Act* (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.[351]

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.[352]

Each year OLG produces a detailed analysis of council data collected on the seizures of cats and dogs.[353] However, this data is not reported in a timely fashion: for example, data collected for the 2011-12 period was reported in June 2013.[354]

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.[355] 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

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347 OLG, *Guideline on the Exercise of Functions under the Companion Animals Act*, October 2015, p 86, at https://www.olg.nsw.gov.au/sites/default/files/Guideline%20on%20the%20exercise%20of%20functions%20under%20the%20comapnions%20animals%20act%20-%20November%202015.pdf, accessed on 8 January 2016.

348 CA Act, s 67A.

349 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.

350 Email to IPART from OLG, 4 November 2015.

351 OLG, *Guideline on the Exercise of Functions under the Companion Animals Act*, October 2015, p 86.

352 Ibid.

353 See OLG, *Analysis of Council Data Collection for Seizures of Cats and Dogs 2011/2012*, June 2013, at www.olg.nsw.gov.au/sites/default/files/pound_data_report_-_2011_12.pdf, accessed on 8 January 2016.

354 Ibid.

355 Information provided to IPART from OLG, 23 October 2015.

with a quantitative measure to determine the ongoing impact of the Act – and, specifically, compulsory microchipping".[356]

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.[357] 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.[358]

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.

356 OLG, *Guideline on the Exercise of Functions under the Companion Animals Act*, October 2015, p 86.
357 Email to IPART from OLG, 4 November 2015.
358 NSW Government, *NSW Government Response to Companion Animals Taskforce Recommendations*, February 2014, at https://www.olg.nsw.gov.au/sites/default/files/Government-response-to-Companion-Animals-Taskforce-recommendations.pdf, accessed on 4 December 2015.

12 Community order

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 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* (GC Act) 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 recommendations aim to improve councils' ability to undertake their community order functions more effectively and efficiently.

Other burdens raised by councils on which we have not made 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.[359]

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.

Recommendations

49 That the NSW Government, in consultation with councils, 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.

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

[359] City of Sydney Council, Questionnaire response, August 2015.

12.1.1 Stakeholder comment

In response to our review, stakeholders identified that:[360]

- 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:[361]

- Councils should be allowed to establish permanent AFZs.
- Triennial reviews should be removed where police and council agree on renewing an AFZ.
- 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.

Port Stephens Council also argued that enforcement of AFZs and APAs should be the responsibility of the NSW Police only, and not councils.[362]

Stakeholders expressed strong support for our draft recommendations on AFZs and APAs and requested that a review of AFZ and APA provisions be conducted in consultation with councils.[363] We have amended this recommendation to include council consultation. Only one council argued that current processes for AFZs, APAs and temporary and events based alcohol restrictions are not inefficient or burdensome.[364]

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360 IPWEA and Nambucca Shire Council submissions to IPART Issues Paper, August 2015; Campbelltown City Council, Sutherland Shire Council, City of Sydney Council and Lismore City Council Questionnaire responses, August 2015; and Sutherland Shire Council submission to IPART Draft Report, February 2016.

361 Ibid.

362 Port Stephens Council submission to IPART Draft Report, February 2016.

363 For example, Wyong Shire Council, Hornsby Shire Council and Warringah Council submissions to IPART Draft Report, February 2016.

364 Tumut Shire Council submission to IPART Draft Report, February 2016.

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.[365] 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.[366]

AFZs are essentially a short-term control measure intended as early intervention to prevent escalation of irresponsible street drinking to incidents involving serious crime.[367] The expectation is that the desired objectives can be achieved within the operational period.

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.[368]

The Ministerial Guidelines set out evaluation criteria for councils when considering re-establishing an AFZ which include:[369]

- 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.[370]

With respect to APAs, under section 632A of the LG Act, councils can declare any public place (or part of a public place)[371] 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.

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365 McNamara, L and Quilter, J, *Public Intoxication in NSW: The Contours of Criminalisation*, 2015, p 17.

366 Office of Local Government (OLG) (previously Department of Local Government (DLG)), *Ministerial Guidelines on alcohol – free zones*, February 2009, p 5.

367 OLG (previously DLG), Circular to Councils no. 09-05, Alcohol Free Zones – Update of Ministerial Guidelines, February 2009.

368 NSW Legislative Assembly, Hansard – 13 November 2008, Liquor Legislation Amendment Bill 2008, Agreement in Principle, p 2.

369 OLG, *Ministerial Guidelines on alcohol – free zones*, February 2009, p 12.

370 McNamara, L and Quilter, J, *Public Intoxication in NSW: the contours of Criminalisation*, 2015, p 20.

371 Except for a public place that is part of a public road or car park which are covered by AFZs instead.

12.2 Graffiti control – enforcement

Under the GC Act, 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.[372]

We have recommended that the GC Act be amended to enable councils to prosecute commercial entities or individuals that commission bill posting and to provide councils with the compliance and enforcement powers to support this role. 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.

Recommendation

51 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, and
- provide councils with compliance and enforcement powers to support their enforcement role under the Act, similar to those provided under Chapter 7 of the *Protection of the Environment Operations Act 1997*.

12.2.1 Stakeholder comment

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 GC Act. 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.[373]

[372] City of Sydney Council, Questionnaire response, August 2015.
[373] City of Sydney Council, Questionnaire response, August 2015.

The Department of Justice has advised that it is finalising a review of bill posting provisions in the GC Act. The legislation was to be reviewed with particular regard to:[374]

- 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 benefiting 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.

Stakeholders expressed strong support for our draft recommendation to allow councils to prosecute individuals and organisations that commission or produce bill posters.[375] Some councils suggested that it would also be appropriate to give councils additional powers to support this function, similar to those provided by Chapter 7 of the *Protection of the Environment Operations Act 1997* (POEO Act).[376]

Some other councils disagreed that an amendment to the GC Act was necessary, arguing that they adequately deal with bill posters under section 146 of the POEO Act.[377] With specific legislation to address graffiti control, we consider it is appropriate for enforcement action to be taken under the GC Act rather than the POEO Act, and that councils should be provided with adequate powers to do this.

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374 Information provided to IPART by the Department of Justice, 11 December 2015.

375 For example, Rockdale City Council and Wollongong City Council submissions to IPART Draft Report, February 2016.

376 Fairfield City Council and Ku-ring-gai Council submissions to IPART Draft Report, February 2016.

377 Tumut Shire Council and Warringah Council submissions to IPART Draft Report, February 2016.

Appendices

A Terms of Reference

RECEIVED
24 APR 2015
INDEPENDENT PRICING & REGULATORY TRIBUNAL

Reference: A1097975

22 APR 2015

IPART
Doc No .....
File No .....

Dr Peter Boxall AO
Chairman
Independent Pricing and Regulatory Tribunal
PO Box K35
HAYMARKET POST SHOP NSW 1240

Dear Dr Boxall

Pursuant to section 9 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 MP
Premier

Encl.

cc Minister for Local Government

GPO Box 5341, Sydney NSW 2001 ■ P: (02) 9228 5239 ■ F: (02) 9228 3935 ■ www.premier.nsw.gov.au

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

1. Special variation process and rate pegging
The rate peg determines the maximum percentage amount by which a council may increase its general income for the year. Under the *Local Government Act 1993*, 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.
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, ie 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.

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 $1 million 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

Section 3.6 of *Towards New Local Government Legislation Explanatory Paper: proposed Phase 1 amendments* proposes amending sections 252 to 254 of the LG Act to streamline the publishing of Councillors' expenses and remove the requirement to provide OLG with annual copies of their adopted policies.

Conclusion

Stakeholder's issues in this area are already being addressed through Phase 1 of the LG Act review. No further action is required.

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).

- 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 11 to regulate LWUs on a catchment or regional basis, rather than on an individual LWU basis, using a whole-of-government, risk-based and outcomes focused regulatory approach, 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 regulate LWUs on a catchment or regional basis, rather than on an individual LWU basis, using a whole-of-government, risk-based and outcomes focused regulatory approach 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. Other councils do not agree that this approach is more efficient.
- 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.

The Codes SEPP is made up of a number of Codes including the Exempt Development Codes, General Housing Code, Rural Housing Code, Housing Alterations Code, General Development Code, Commercial and Industrial Alterations Code, Commercial and Industrial (New Buildings and Additions) Code, Subdivisions Code, Demolition Code and Fire Safety Code.

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.
- Repeal the Codes SEPP and include relevant CDC provisions in the Standard Instrument LEP.
- 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 $25,000 and $6 million 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.

Stakeholders' description of burden and proposed solutions

- 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.
- Remove the cap or at least raise it and index it.
- Remove the need for IPART approval and scrutiny of CPs.

IPART analysis

- 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.
- 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.
- IPART's review process ensures that taxpayers only pay the efficient cost of providing essential infrastructure.

Conclusion

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.

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.

Stakeholders' description of burden and proposed solutions

- Use of the LEP process for reclassification of public land can be unwieldy, costly and time-consuming.
- 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.
- Reduce the regulatory requirements in this area or review the processes around reclassification to ensure they are efficient and effective.
- Reconsider the need for the classification of land as community or operational in the LG Act.

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.[378]
- 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.

[378] Information quoted from the Voluntary Planning Agreements website http://vparegister.planning.nsw.gov.au/

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 September 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

aligning trading hours should be considered in this context.

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).
- According to HCCREMS, 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 (ie, 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.

- We identified as 'best practice' in our *Local Government Compliance and Enforcement – Draft Report* (2013) the use of Memoranda of Understanding (MoUs) between councils and key State regulators, such as NSW Police, EPA and WorkCover, where there are overlaps in the enforcement role of councils and the State (eg, waste, asbestos, noise). We reasoned that this would facilitate greater communication, coordination and access to information to assist with the compliance and enforcement functions of councils, to the benefit of the local community.
- If the new proposed licensing system does not proceed, this best practice approach could assist to coordinate investigations of illegal brothels between councils and NSW Police. Police have the expertise, experience and broader powers to conduct such investigations. Councils do not. We do not consider that councils should be 'skilled up' to undertake investigations of illegal brothels or OLG would have the relevant expertise to guide councils in this area. Under an MoU between councils and NSW Police, agreement could be reached on the investigation of illegal brothels. Where there is no planning consent, under the MoU councils could refer these establishments to police for investigation. Councils could then use police investigators as witnesses to establish breaches of planning laws, so the illegal brothels can be closed. Police could also investigate, or refer to other State or Federal agencies, any other breaches that relate to the illegal premises such as sex slavery, drugs, tax evasion or illegal immigration matters.
- This MoU could be negotiated between Local Government NSW (on behalf of all NSW councils) and NSW Police, rather than individually at a local level (ie, each council with its local police).

Conclusion

If a new licensing system as proposed by the *Standing Committee on the Regulation of Brothels* does not proceed, Local Government NSW (on behalf of all NSW councils) would benefit from entering into a Memorandum of Understanding (MoU) with the NSW Police to institute a coordinated approach to the investigation of illegal brothels. This MoU would relate to the investigation and assistance to be provided by police, and coordination with councils, in relation to premises that are suspected to be brothels and have no planning consent. Under this MoU:

- police would investigate suspected illegal brothels
- councils would use police investigators as witnesses to establish breaches of planning laws in council proceedings, in order to close down illegal brothels, and
- police could also investigate or refer to other State or Federal agencies any other breaches identified that relate to the illegal premises.

10. State Environmental Planning Policy No 44 – Koala Habitat Protection

This policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free living population over their present range and reverse the current trend of koala population decline.

Stakeholders' description of burden and proposed solutions

- Applies in areas where koalas are unlikely to be found and increases costs and delays. Revise so it doesn't apply to these areas (eg, where koalas haven't been sighted in 50 years).

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.

Table B.5 Building and Construction

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, limiting the commercial opportunities to achieve the strategic objectives identified in Plans of Management. 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 undertaking 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 three RMS representatives and five council representatives (one 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.

IPART analysis

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.

Conclusion

The burden on councils imposed by the rural addressing system is minimal.

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). OLG publishes this data quarterly and annually on their website.

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 to 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*, February 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.

Table B.8 Environment

1. Waste Management - Reporting requirements

Councils that operate waste facilities within 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. 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.
  - Lake Macquarie Council has suggested that the review being undertaken by the EPA (mentioned below) consider the development of online databases that record on a regular interval all the waste data required, assist councils with streamlined weighbridge codes to allow comparison of the data the various LGAs provide, and eliminate the need for separate reporting by incorporating it into one data collection point with consistent questions.

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.
- 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)
- 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, subject to a management order, an approved voluntary management proposal, ongoing maintenance order and/or is the subject of a site order audit statement if a copy of such statement has been provided to the council.

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, and the amendment of the *National Environment Protection (Assessment of Site Contamination) Measure 1999* (April 2013), 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 is currently providing 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.

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*, and
- 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, and
- 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, and
- 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.

In addition, Lake Macquarie Council requests a review of the thresholds for offences for which council is responsible under the POEO Act. For example, in the area of illegal dumping, council is the appropriate regulatory authority (ARA) for in excess of 95% of cases. The council suggests the review consider the available resources of the ARA and the EPA.

IPART analysis

Council officers, who are authorised officers under the POEO Act, have many regulatory powers under Chapter 7 of the Act, including investigative and enforcement powers.

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. The EPA's contaminated land Regional Capacity Building program has been in place since 2014, and is designed to ensure that councils in regional areas have capacity to deal with contaminated land management issues.

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 (eg, 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), and
- 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, eg, best spraying methods
- better communication between LLS and local government about approved TSRs, and
- adopting a different approach to weed management, eg, view it as regeneration of areas – ecofriendly 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 a keep 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 reporting 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 state wide 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 1993* to control aquatic weeds. The prohibition of clearing under the *Native Vegetation Act 2003* 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

1. Graffiti Control – register
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.
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.

Table B.10 Public Health and Safety

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' (ie, '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, and
- 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, and
  - 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 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

1. Council as provider of last resort
Stakeholders' description of burden
▾ 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). ▾ The State should provide funding for these services.
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.
2. *Government Information (Public Access) Act 2009* reporting and compliance
Stakeholders' description of burden
▾ Current timetable of GIPA annual reporting does not align with other Council reports such as their annual report.
IPART comment
▾ The Secretariat has had further discussions with the IPC since the publication of the Draft Report in which the significant impact of this recommendation to their reporting process to Parliament has been clarified. ▾ The GIPA reporting deadlines are common across all GIPA reporting bodies and are not particular to LG. Recommendations relating to Local Government specific GIPA related burdens have been made in Chapter 8 of this report. ▾ We initially made a recommendation in this area to align reporting requirements which was supported by a large number of councils ▾ However many did not see the burden of earlier reporting as significant and given the disruption to statutory reporting the recommendation would impose, it is unlikely to result in a net benefit. Given the additional information gathered from the IPC and the likely impacts we have deemed this issue as out of scope.

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 (eg, in a small council), and
- as gathering information 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.

The EPA is currently building an online portal (eConnect EPA), which will enable a range of EPA licensing transactions to take place electronically. This will be available from mid-2016, and will significantly reduce the administrative burden for councils that choose to submit annual returns using the portal.

14. Waste Levy – materials liable for the waste levy

The POEO Act requires payment of a waste levy on all waste received at waste facilities within 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).

Stakeholders' description of burden

Councils queried the need to pay a levy on items which cannot be recycled or reused eg, 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.

D Consultation

The tables below list the stakeholders involved in consultation on this review to date.

Table D.1 Submissions to the Issues Paper

Councils and council organisations	
Albury City Council	Randwick City Council
Bega Valley Shire Council	Richmond Valley Council
Blacktown City Council	Southern Sydney Regional Organisation of Councils
Centroc – Central NSW Councils	Tamworth Regional Council
City of Canada Bay Council	Tenterfield Shire Council
Cootamundra Shire Council	Tweed Shire Council
Fairfield City Council	Wentworth Shire Council
Forbes Shire Council	Wyong Shire Council
Goldenfields Water County Council	Wyong Water
Gunnedah Shire Council	
Ku-ring-gai Council	**NSW Government agencies**
Kyogle Council (Confidential)	Information and Privacy Commission
Lake Macquarie City Council	NSW Department of Industry
Local Government NSW	
Maitland City Council	**Organisations**
Mosman Municipal Council	Housing Industry Association
Muswellbrook Shire Council	Institute of Public Works Engineering Australasia, NSW Division
Nambucca Shire Council	The Real Estate Institute of NSW
Narrandera Shire Council	Urban Taskforce Australia
Narromine Shire Council (Confidential)	Water Directorate
North Sydney Council	
Parramatta City Council	**Individuals**
Penrith City Council (Confidential)	P Gardiner
Port Stephens Council	C Richardson
Queanbeyan City Council	

Table D.2 Councils responding to IPART's questionnaire

Bega Valley Shire Council	Maitland City Council
Blacktown City Council	Marrickville Council
Bland Shire Council	Mosman Municipal Council
Blue Mountains City Council	Newcastle City Council
Bogan Shire Council	North Sydney Council
Broken Hill City Council	Parramatta City Council
Campbelltown City Council	Penrith City Council
City of Canada Bay Council	Pittwater Council
Coffs Harbour City Council	Port Macquarie-Hastings Council
Council of the City of Sydney	Port Stephens Council
Eurobodalla Shire Council	Rockdale City Council
Fairfield City Council	Shoalhaven City Council
Great Lakes Council	Snowy River Shire Council
Greater Taree City Council	Sutherland Shire Council
Griffith City Council	Temora Shire Council
Gwydir Shire Council	Tenterfield Shire Council
Holroyd City Council	The Council of the Municipality of Kiama
Ku-ring-gai Council	The Hills Shire Council
Kyogle Council	Upper Lachlan Shire Council
Lake Macquarie City Council	Wagga Wagga City Council
Leeton Shire Council	Warringah Council
Leichhardt Municipal Council	Warrumbungle Shire Council
Lismore City Council	Wollondilly Shire Council
Liverpool City Council	

Table D.3 Councils attending the workshops

Coffs Harbour workshop, 10 September 2015	
Armidale Dumaresq Council	Nambucca Shire Council
Bellingen Shire Council	Port Macquarie-Hastings Council
Glenn Innes Severn Council	Richmond Valley Council
MidCoast County Council	Tenterfield Shire Council
Wagga Wagga workshop, 15 September 2015	
Lachlan Shire Council	Tumbarumba Shire Council
Lockhart Shire Council	Wagga Wagga City Council
Snowy River Shire Council	Wakool Shire Council
Cootamundra Shire Council	Gundagai Shire Council
Dubbo workshop, 16 September 2015	
Brewarrina Shire Council	Gilgandra Shire Council
Cabonne Council	Narromine Shire Council
Carrathool Shire Council	Walgett Shire Council
Cobar Shire Council	Warren Shire Council
Dubbo City Council	Warrumbungle Shire Council
Sydney workshop, 8 October 2015	
Bega Valley Shire Council	Penrith City Council
Burwood Council	Port Stephens Council
City of Ryde	Rockdale City Council
Council of the City of Botany Bay	Shoalhaven City Council
Eurobodalla Shire Council	Singleton Council
Fairfield City Council	Sutherland Shire Council
Hawkesbury River County Council	Uralla Shire Council
Hunters Hill Council	Warringah Council
Lake Macquarie City Council	Wollondilly Shire Council
Mosman Municipal Council	Wyong Shire Council
North Sydney Council	

Note: Local Government NSW was represented at every workshop.

Table D.4 NSW Government Agencies consulted

Building Professionals Board	NSW Geographical Names Board
Cemeteries and Crematoria NSW	NSW Ministry of Health
Department of Family and Community Services	NSW Food Authority
Department of Justice	NSW Fair Trading
Department of Planning and Environment	NSW Industrial Relations
Department of Premier and Cabinet	NSW Office of Water
Department of Primary Industries	NSW Ombudsman
Environment Protection Authority	Office of Environment and Heritage
Fire & Rescue NSW	Office of Local Government
Heritage Council of NSW	Division of Resources & Energy, Mine Safety
Information and Privacy Commission NSW	Roads and Maritime Services
Land and Property Information	Rural Fire Service, NSW
Office of Liquor, Gaming and Racing	Sport and Recreation
Long Service Corporation	State Library of NSW
NSW Department of Finance, Services and Innovation	Western Sydney Parklands Trust
NSW Department of Industry, Skills and Regional Development	WorkCover Authority of NSW

Table D.5 Submissions to the Draft Report

Councils and council organisations

Albury City Council
Bankstown City Council
Bega Valley Shire Council
Bellingen Shire Council
Blayney Shire Council
Blue Mountains City Council
Burwood Council
Camden Council
Campbelltown City Count
Central NSW Councils
City Canada Bay
Clarence Valley Council
Cooma Monaro Shire Council
Coffs Harbour City Council
Coolamon Shire Council
Cootamundra Shire Council
Dubbo City Council
Eurobodalla Shire Council
Fairfield Shire Council
Forbes Shire Council
Gloucester Shire Council
Gosford City Council
Goulburn Mulwaree Council
Greater Taree City Council
Gundagai Shire Council
Gunnedah Shire Council
The Hills Shire Council
Holroyd City Council
Hornsby Shire Council
Hunters Hill Council
Ku-ring-gai Council
Kyogle Council
Lake Macquarie City Council
Leichhardt Municipal Council
Local Government NSW
Local Government Professionals Australia NSW
Lockhart Shire Council
Marrickville Council
Mid North Coast Region of Councils
Mid-Western Regional Council
Mosman Council
Nambucca Shire Council
North Sydney Council
Orange City Council
Parramatta City Council
Penrith City Council
Pittwater Council
Port Macquarie Hastings Council
Port Stephens Council
Queanbeyan City Council
Randwick City Council
Riverina Eastern Region of Councils
Rockdale City Council
City of Ryde
Shoalhaven City Council
Shore Regional Organisation of Councils
Southern Sydney Region of Councils
Snowy River Council
Sutherland Shire Council
Tumut Shire Council
Tweed Shire Council
Warringah Council
Wellington Council
Willoughby City Council
Wingecarribee Shire Council
Wollondilly Shire Council
Wollongong City Council
Woollahra Municipal Council
Wyong Shire Council

NSW Government Agencies

Cemeteries and Crematoria NSW
Department of Primary Industries - Water and Lands
Environmental Protection Authority NSW
Information and Privacy Commission NSW
NSW Health
Office of Environment and Heritage (confidential)
State Library
Roads and Maritime Services
Water NSW

Organisations	Individuals
Advocate Consultants	H Rolfe
Australian Institute of Building Surveyors	P Gardiner (Confidential)
Building Professionals Board	
City Water Technology Pty Ltd	
Institute of Public Works Engineering Australasia NSW	
Lower Macquarie Water Utility Alliance	
NSW Farmers Association	
Septic Tank Action Group	
United Services Union	
Urban Taskforce	
Water Directorate	

Table D.6 Public Hearing Panel Participants

Session 1 – Systemic Issues
Mr Mark Hely – Office of Local Government
Mr Shaun McBride – Local Government NSW
Mr Paul Spyve – Queanbeyan City Council
Ms Deborah Silva and Mr Corrie Swanepoel – Ku-ring-gai Council
Ms Veronica Lee – Mosman Council
Dr Fran Flavel – Port Stephens Council
Ms Rosemary Dillon – Blue Mountains City Council

Session 2 – Planning, Building & Construction Administration & Governance
Mr Mark Hely – Office of Local Government
Mr Shaun McBride – Local Government NSW
Ms Josephine Wing – Department of Planning and Environment
Dr Gabrielle Wallace – Building Professionals Board
Chief Superintendent Greg Buckley – Fire and Rescue NSW
Ms Roxanne Marcelle-Shaw – Information and Privacy Commission
Mr John Roydhouse – Institute of Public Works Engineering Australasia
Ms Deborah Silva and Ms Anne Seaton – Ku-ring-gai Council
Mr David Kelly – Randwick City Council
Ms Rosemary Dillon – Blue Mountains City Council

Session 3 – Water & Sewerage, Public land & infrastructure, Animal control
Mr Mark Hely – Office of Local Government
Mr Shaun McBride and Mr Sascha Moege – Local Government NSW
Mr Frank Garofalow – Department of Primary Industries - Water
Mr Jeff Sharp - Water Directorate
Mr Paul Hunt and Dr Paul Byleveld – NSW Health
Mr David Clarke – Department of Primary Industries - Lands
Mr Peter McMahon and Ms Trish Grunert – Roads and Maritime Services
Mr Kent Boyd – Central NSW Councils
Ms Deborah Silva and Ms Anne Seaton – Ku-ring-gai Council