

27 October 2011

ATT: Dr Warren Mundy, Commissioner

Business Regulation Benchmarking- Role of Local Government
Productivity Commission
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NSW Business Chamber
incorporates

- Sydney Business Chamber
- Australian Business Limited Apprenticeships
- Australian Business Lawyers and Advisors
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Dear Commissioner,

The NSW Business Chamber (NSWBC) welcomes the work of the Productivity Commission in its continued examination of the regulatory impact on the Australian business environment. The NSWBC is pleased to provide the Commission with its submission on Business Regulation Benchmarking – Role of Local Government.

The NSWBC is one of Australia's largest business support groups, helping around 30,000 businesses each year. Founded in 1885, the NSWBC works with thousands of businesses, from owner operators to large corporations, from product based manufactures to service provider enterprises. The Chamber is a leading business solution provider and lobbying group with strengths in workplace management, occupational health and safety, industrial relations, human resources, international trade and improving business performance.

Operating throughout a network in metropolitan and regional NSW, NSWBC represents the needs of business at a local, State and Federal level, advocating on behalf of its members to create a better environment for industry.

This submission will focus in particular on those issues that are relevant to NSWBC members affected by local government regulation within the Sydney metropolitan area.

Local Government in NSW

There are currently 152 general-purpose local councils operating in NSW. Additionally, there are 14 specific purpose county councils (with responsibility for matters such as water and weeds management) in operation across the state. As noted in the Commission's Issues Paper, while most states in Australia have instigated wide ranging forced amalgamations of councils, NSW has instead relied on a voluntary amalgamation process. Hence, the number of councils in NSW over the last 20 years has remained relatively static.

Councils in NSW have a wide range of responsibilities, from the delivery of waste and water services, to acting as the consent authority for planning and development applications as well as the management of companion animals.

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It has been consistently recognised however, from both within Government and industry, that the current number of councils in NSW is unworkable and unsustainable in the longer term. While Government favours voluntary amalgamations, industry has been advocating for forced amalgamations, at least for shared services and for the creation of other efficiency dividends. While there is a policy impasse, the opportunity for reform has not been grasped. The longer such decisions are postponed, the more intractable the issue becomes.

This ongoing failure to reform local government has resulted in piecemeal policy development in some areas and the ongoing dilution of local government powers, particularly in relation to planning and development decisions, to state government.

At a Sydney specific level, maintaining 41 councils and their associated regulatory regimes in the Sydney basin presents real barriers to business growth for NSW. Local differences in regulation can make compliance for business unduly complex and costly.

The following case studies and commentary highlight the complexity and inconsistency of local government regulation, and underpin a recommendation for reform and harmonisation of local government power and authority.

Case Study 1: Local Government Filming Protocol

Is there evidence to suggest that the same regulatory responsibilities are exercised differently by different local governments?

Do the local government regulatory requirements and processes vary unnecessarily between jurisdictions or between businesses operating within a jurisdiction? Which areas could local governments harmonise activities to reduce costs of compliance within and across jurisdictions?

The *Local Government Filming Protocol 2009*¹ was introduced to regulate the fees and charges imposed by local councils on local film production within their local area. The protocol was introduced to ensure that councils were only charging on a cost recovery basis and in a way which reflected the actual impact of the activity in a local area.

The changes were welcomed by the local film industry and have assisted in ensuring that the fees and charges imposed by local councils are not prohibitive to filming activity.

These changes however failed to introduce similar cost restrictions on councils imposing fees and charges on stills photography². Councils are able to charge for stills photography as part of their normal fees and

¹ The Protocol is made under Division 4, s.114 of the *Local Government Act 1993*

² Filming under the *Local Government Act 1993* is defined as being

“recording images (whether on film or video tape or electronically or by other means) for exhibition or broadcast (such as by cinema, television or the Internet or by other means) and includes such acts or things as may be prescribed by the regulations as being filming, but does not include:

(a) still photography, or

(b) video recording of a wedding ceremony or other private celebration or event principally for the purpose of making a record for the participants in the ceremony, celebration or event...”

(emphasis added)

charges revenue. The table set out below sets out the different fees for such activity across a selection of key councils in Sydney:

Stills Photography Fees 2011 / 12

Council	Type	Cost
City of Sydney	Ultra Low Impact (<10 crew)	Free
Manly	Commercial Stills Photography	\$825 (day) \$410 (half day)
Mosman	Stills Photography	\$370 (4 hours) \$35 (each hour thereafter)
North Sydney	Stills Photography	\$150 Lodgement Fee
Randwick	Stills Photography	Free
Warringah	Stills Photography	\$235 2 hours \$780 day
Waverley	Stills Photography	\$315.20 per hour
Woollahra	Ultra Low Impact (<10 crew)	Free

In addition to the myriad number of compliance and fee regimes imposed by local councils, the burden for small commercial photographers is further complicated by both the Sydney Harbour Foreshore Authority and National Parks Authority regulating photography on land under its care and control³. It is not uncommon during the course of a single day shoot for a professional stills photographer to be exposed to multiple compliance and fee regimes.

These requirements place a significant and unnecessary administrative burden on the small - medium commercial photography industry.

While these processes could be greatly simplified through the introduction, by the State Government, of a specific definition of low impact photography (<10 crew) and exempting this type of photography from the approval and fee regime currently imposed by local government, this issue is symptomatic of a system where regulatory control is too often devolved to reflect "local circumstances". For the Sydney basin, "local" can mean councils trying to reflect the views of anywhere between 14,000 to 300,000 residents⁴. For business and the broader community, the boundaries imposed by local government are both archaic and arbitrary.

The consequence of this is that when an enterprise, government agency or community group attempts to make a commercial or strategic decision based on a comparison of information between LGAs it is almost impossible to determine like with like. The extent of local variation in terms of fees, charges and regulation make planning beyond LGA borders frustratingly difficult.

These issues could be simply resolved if the 41 councils currently operating in the Sydney Basin were amalgamated into the ten subregions of Sydney identified by the State Government's Metropolitan Strategy⁵. By doing so, the policies, plans and information provided by a council would cover a large enough geographical footprint that businesses and the community could move forward with confidence when engaging with government at the local level. In its present state, however, local government in Sydney is a parlous patchwork with engagement and compliance with local councils unduly burdensome on both businesses and community members.

³ See http://www.shfa.nsw.gov.au/sydney-For_business-Venue_hire_commercial_opportunities_and_vessel_bookings-Filming_and_photography.htm and <http://www.environment.nsw.gov.au/resources/parks/policyFilmingPhotography2010.pdf>

⁴ Population of The Council of the Municipality of Hunters Hill (14,467) and Blacktown City Council (299,797) source ABS Population

⁵ See <http://www.metrostrategy.nsw.gov.au/Subregions/tabid/59/language/en-AU/Default.aspx>

Case Study: Developer Contributions and land use planning

The ongoing challenges of housing a growing population, maintaining green space and increasing the availability of land for employment and industry means that land use planning and its regulation will continue to be of primary policy concern for national, state and local government as well as for business and the wider community.

The failure to reform the structure of Sydney councils means, however, that these challenges are even more apparent and subject to even greater politicisation within Australia's biggest city.

While there have been numerous attempts to simplify and streamline the planning process over the last 10 years, without fundamental reform to the governance structures within councils these attempts can only provide incremental improvement to the planning process and delivery of infrastructure within the Sydney Basin.

The degree of local variation in land use planning can be clearly demonstrated through the differences in councils' application of developer contributions under s.94 of the *Environment Planning and Assessment Act 1979* ("the EP&A Act").

Section 94 relevantly provides:

"(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:

- (a) the dedication of land free of cost, or*
- (b) the payment of a monetary contribution, or both"*

This provision allows councils, when acting as a consent authority, to charge developers a fee for the additional / or projected impact a proposed development will have on council services and infrastructure. The variation in the application of these fees and charges can be seen through a selection of Sydney councils' contribution regimes for parking provision.

Section 94 direct contribution to council car parking (Commercial)

Council	Fee	Notes
Manly	\$32,931.50 (per parking space)	
Mosman	\$22,938 (per parking Space)	
North Sydney	Not applied	Dealt with under councils Development Control Plan
Pittwater	Not applied	Dealt with under councils Development Control Plan
Randwick Council	Not applied	Dealt with under councils Development Control Plan
City of Sydney	Not applied	Applies a contribution to the provision of bicycle parking infrastructure
Waverley	Not applied	Dealt with under councils Development Control Plan

While these are all similarly located urban coastal councils, only Manly and Mosman council choose to apply a direct fee contribution for council provided carparks (with City of Sydney charging a direct fee for bicycle parking provision).

With councils who choose not to apply a fee, car parking issues are dealt with under their relevant Development Control Plan (DCP).

A DCP provides specific guidelines and standards for development in a local area. A DCP can include requirements for a developer to provide off-street parking in a development. The size and type of parking to be required is based on the floor space area / the number of bedrooms / or type of business involved in a development application. For many businesses wishing to expand in a local area, these fees and their complexity can mean this is a costly and time consuming process, and may still result in a council rejecting an application. To assist, councils do provide pre-DA lodgement meetings to identify issues related to a proposed development. However, the prohibitive nature of the fees applied by councils⁶ mean that businesses put business expansion and growth strategies in the “too hard” basket. Economic growth and job creation is stymied as a result. The overall economic impact of these types of local council fees, charges, and their related decision making processes needs to be measured, in real terms.

NSWBC believes that reducing the number of councils in Sydney would serve to alleviate these issues. A sensible amalgamation of the 41 councils in the Sydney Basin would ensure that land use planning requirements are applied in a consistent and strategic manner across the metropolitan area. Importantly, such a strategy would also address the financial viability of councils in the longer term, as councils would no longer be individually reliant on income derived from business and development growth.

Destination 2036

Through its *Destination 2036*, the NSW Division of Local Government is currently exploring the role and requirements of local councils over the next 15 years⁷.

To assist in this review, the Minister for Local Government, hosted the *Destination 2036* conference, in Dubbo over 17 and 18 August 2011. The conference was designed to develop strategies to ensure councils remain viable in the longer term.

Following the conference a roadmap was released detailing the further steps to be managed by a ministerial action group. These steps include clarifying councils' roles and functions and the need to develop new funding models to ensure councils financial viability⁸. The document however provides no firm indication of whether or not the Government is prepared to reconsider its stated policy position of no forced council amalgamations. *NSW 2021*, the NSW Government State Plan, is equally vague, with reference in Goal 32 to “increase opportunities for people to participate in local government decision making, and local planning decisions’. It would seem that such an objective could be reached through amalgamated councils, if proper and due attention was paid to regulatory issues, fees and charges (as mentioned above), stakeholder participation, and the timeliness of decision making on planning and development applications.

⁶ For example Manly Council charges \$2,500 for a pre DA lodgement meeting with Senior Planners and Managers, North Sydney \$1,000 and Mosman \$950 (plus 0.001% on amount in excess of \$1,000,000)

⁷ See <http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Circulars/11-16.pdf>

⁸ <http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Destination%202036%20Workshop%20-%20Communique%20-%2018%20August%202011.pdf>

While the NSWBC is supportive of the process being undertaken by the NSW Government, there are concerns that the outcome of this process may be the continuation of a policy of voluntary amalgamations, with the only likely amendment to that policy being support for strategic alliances between councils.

Strategic alliances and regional networking have been strongly supported by the Division of Local Government as a “third way” solution to local government reform⁹. While there have been some successes in councils working more closely together¹⁰, under the current system of local government the effectiveness of commitments made at a regional level are primarily determined by the personalities at both the elected and senior management levels of council.

As a result of a number of high profile strategic alliance failings, these models are properly categorised as an inadequate policy response from a sector unwilling to embrace real reform.

Case Study: New England Strategic Alliance of Councils

In 2003, the then Minister for Local Government, the Hon. Tony Kelly, commissioned Mr Chris Vardon to conduct a regional review of the structure of local government in the New England area. The Vardon Report recommended that the local government areas of Armidale-Dumaresq, Uralla, Guyra, and Walcha shire councils be amalgamated. This report was ultimately supported by the NSW Local Government Boundaries Commission and a recommendation was provided to the Minister for the subject councils to be amalgamated.

During the period of the reports preparation however, the councils affected by the proposed amalgamation formed the New England Strategic Alliance of Councils (NESAC). NESAC was established to realise operational efficiencies between councils and to ultimately improve service delivery to the community through a co-operative framework¹¹.

After strong lobbying by the respective Councils and the local State Member of Parliament, the Minister agreed to defer his decision in relation to the amalgamation to provide time for the Strategic Alliance to demonstrate that it was a viable alternative to amalgamation.

In 2009, with Uralla and Walcha councils having broken away, the NESAC Alliance ultimately collapsed.

⁹ See <http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Collaboration%20and%20Partnerships%20between%20Councils%20-%20A%20Guidance%20Paper.pdf>

¹⁰ See for example the establishment of Kimbriki Environmental Enterprises Pty Ltd (KEE), which was established in 2009 to own and operate the Kimbriki tip site with Warringah, Manly, Mosman, and Pittwater Councils, as shareholders. The business is now directed by an independent non-executive Board of Directors and an experienced management team appointed by the SHOROC councils.

¹¹ The NESAC was established with a “non-binding shared services charter. In addition to the four general purpose councils, the New England Weeds Authority, a county council, was incorporated as a non-voting member. The NESAC charter objectives were originally set as follows:

- To implement a successful alternative model for Local Government Reform based on efficiency, performance and continued local autonomy.
- To identify one-off savings of \$1.3m and then moving gradually to annual savings and benefits of at least \$1.7m over fourteen functional areas.
- To implement a performance management system to measure increased service levels, new services provision, and use savings and benefits to meet asset sustainability obligations” page 4, *NESAC Restructure Review*, Forsyths Accountants, 24 July 2009

Some of the key issues identified for the collapse included:

- its complex and fragile governance structure;
- significant cultural and parochial issues and lack of commitment from management and staff;
- cumbersome organisational structure; and
- limited resources for the implementation of an ambitious reform program¹².

Rather than address these issues, by instituting proper structural reform, the former NSW Government instead placed the councils into a new program of co-operation with oversight from the Division of Local Government¹³.

Without a proper, separated entity (such as a new council or a new council corporation¹⁴) in place such an approach is exposed to a significant degree to the attitudes of the personalities involved and is prone to failure.

Regional Organisations of Councils

As noted elsewhere in this submission, the NSWBC is strongly supportive of amalgamation of councils within the Sydney basin. In the context of rural councils however, there may be a different approach whereby Regional Organisations of Councils (ROCs) are empowered to more ably assist in the delivery of services as well as councils' regulatory functions.

ROC's are voluntary council organisations brought together to give a regional local government perspective on issues. While there are 17 ROCs in NSW, there is little legislative recognition, or prescription on their formation or decision making power¹⁵.

There are a number of good examples of rural councils using a ROC as a platform to gain economies of scale¹⁶ and to combat skills shortages¹⁷ within local communities.

¹² Ibid page 5

¹³ http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/101115_LG_Regional_Planning_New_England%20.pdf

¹⁴ NSW Councils are restricted in their ability to form and participate in corporate entities by operation of s.358 of the *Local Government Act 1993* which provides:

"358 Restrictions on formation of corporations and other entities

(1) A council must not form or participate in the formation of a corporation or other entity, or acquire a controlling interest in a corporation or other entity, except:

(a) with the consent of the Minister and subject to such conditions, if any, as the Minister may specify...". Ministers have been generally unwilling to provide this consent.

¹⁵ Section 355 of the Local Government Act 1993 provides the only references to ROCs in that Act as follows:

"355 How does a council exercise its functions?"

A function of a council may, subject to this Chapter, be exercised:

... (d) jointly by the council and another council or councils (including by means of a Voluntary Regional Organisation of Councils of which the councils concerned are members), or

(e) by a delegate of the council (which may, for example, be a Voluntary Regional Organisation of Councils of which the council is a member)"

¹⁶ For example, Central NSW Regional Organisation of Councils (CENTROC) has established a procurement service to provide savings for member councils <http://www.centroc.com.au/services/compliance-and-cost-savings/corporate-express>

¹⁷ See the CENTROC Regional Training Service <http://www.centroc.com.au/services/project-teams/12-centroc-projects>

The NSWBC would support an expansion of the role and scope of ROCs to achieve better regulatory outcomes for local businesses. This expansion would include the streamlining of the legislative application process set out under s.358 of the *Local Government Act 1993* to allow more ROCs to be made corporate entities in their own right and be removed from the parochialism of individual councils.

With a separated regional level entity working for local economies of scale and with a coordinated regional approach to infrastructure planning, it is NSWBC's view that rural councils will be in a much better position to meet the needs of businesses which already operate, or those who wish to operate outside of metropolitan NSW.

Conclusion

With 152 councils continuing to operate in NSW, NSW businesses are exposed to significant variations in interpretation and application of councils' regulatory functions. While the NSWBC is supportive of the democratic principles underlying local government decision making, the current size and scope of councils in NSW means that councils are not effective in working with business in driving economic growth. This is particularly apparent within the Sydney Basin.

The NSWBC is strongly supportive of any steps at either federal or state level that leads to a sensible reduction in the number of councils in the Sydney metropolitan area, providing a significant, positive effect on regulation reduction and business growth within the state.

The NSWBC would also support any attempts by the Commission to assess the impact of local council fees, charges, and their related decision making processes on the economic productivity of Australia.

Yours sincerely

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