



Western Australian Local Government Association

SUBMISSION

Metropolitan Local Government Review Panel

**Metropolitan Local
Government Review**

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Submission to:

Metropolitan Local Government Review Panel
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The Association is looking forward to a continuing role in the conversation about the future of Local Government in Perth and in Western Australia.

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Executive Summary

Local Governments are a key component of Australia's Federal system of government and provide democratic representation and services to communities all over Western Australia. There are 30 Local Governments in the Perth metropolitan region all striving to respond to the aspirations and expectations of their local communities. Strengths of Local Government in Western Australian include long-term strategic planning and high levels of community engagement.

The Metropolitan Local Government Review has provided a significant opportunity for the Local Government sector to have a major input into determining the shape and role of Local Government into the future. Throughout the Review, the Association has consulted broadly with its member Local Governments through a range of consultation mechanisms including two forums, a number of focus groups and a Zone and State Council meeting process.

There were three key themes that emerged from the focus group discussions held with current and former Local Government representatives:

- The need to identify the roles and responsibilities of State and Local Government and to ensure that State and Local Governments are appropriately resourced to deliver services to the community
- The need to research and gather evidence that identifies the optimum size, function and form of Local Government, and
- The need to acknowledge that "local" is not negotiable in Local Government; appropriate mechanisms need to remain available for communities to stay connected with Local Government.

As Perth is the economic base of Western Australia and home to three quarters of Western Australia's population, it plays a significant role in determining the economic wellbeing of the state and, increasingly, Australia. The governance of metropolitan regions is primarily undertaken in Australia by State Governments, but Local Governments and the Federal Government also have important roles to play.

Metropolitan governance is a complex issue and many factors must be considered and balanced when determining the optimal governance structures for cities and metropolitan regions. The optimal governance structure for the Perth metropolitan region should be underpinned by a coherent, shared vision of Perth's future. Cities in the twenty-first century will be forced to address increasingly complex economic, social and environmental problems. Navigating the challenges of the twenty-first century will require cooperation between all governments and government agencies, the private and non-profit sectors and the community.

Governance of metropolitan regions is complex and it is inappropriate for a model from another city or another country to be installed in Perth. The Metropolitan Local Government Review Panel has been charged with developing a *Perth Model* of metropolitan governance.

Through a Governance Models Forum held in January 2012, the Local Government sector determined that there are two key components of the optimal governance model for Perth's Local Governments. Firstly, Local Government boundaries in Perth should be based on sustainability principles – economic, social, environmental and organisational sustainability – with reference to *Directions 2031*. At the regional level, regional bodies should be established to provide a broad range of regional service delivery and planning functions. The preferred governance model provides for Local Governments to be formed with reference to objective and defined criteria and creates opportunities for increased collaboration and cooperation at the regional and sub-regional levels.

Beyond metropolitan governance, there are a number of critical success factors to ensure that Local Governments are better able to meet the aspirations and expectations of their communities.

Intergovernmental relations, at the strategic, policy and project levels, must be improved based on the recognition that Local Governments are an important and legitimate sphere of government.

Establishment of a Local Government Commission should be considered. This would ensure a greater focus on capacity building in the Local Government sector and remove the potential for conflict as a result of the Department of Local Government's dual role.

A comprehensive review of the *Local Government Act 1995* should be undertaken to restore the Act to its founding principle of 'general competence'.

Local Government finances should also be improved by amending anomalies in the *Local Government Act 1995* and empowering Councils to set Local Government fees and charges.

Service delivery to communities should be strengthened by reviewing the compliance obligations of Regional Local Governments and allowing Regional Subsidiaries and Council Controlled Organisations (CCO) to be established.

The transition and implementation processes stemming from the Metropolitan Local Government Review are very important. The Panel and the State Government must be

highly cognisant of the period of uncertainty that may follow the release of the Panel's recommendations. State Government imposed Local Government reform should be entirely funded by the State Government. Oversight of the transition and implementation processes should include Local Government and peak body representation.

The Local Government sector remains committed to engaging with the State Government and the broader community about the future of the Perth metropolitan region and the role of Local Government in that future.

Background

About WALGA

The Western Australian Local Government Association (WALGA or “The Association”) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based organisation representing and supporting the work and interests of all 140 Local Governments in Western Australia.

The Association provides an essential voice for approximately 1,250 elected members and over 14,500 employees of the Local Governments in Western Australia and Christmas Island and Cocos (Keeling) Island Councils. The Association also provides professional advice and offers services that deliver financial benefits to Local Governments and the communities they serve.

About Local Government

Local Governments play a key role in the Australian Federation. Local Governments in Western Australia provide democratic representation and a range of services to their respective communities which span the length and breadth of the state.

Local Governments, in one form or another, have existed in Western Australia since the arrival of settlers from Britain in the nineteenth century. The first piece of legislation to weave the fabric of today’s Local Government sector was the *Towns Improvement Act of 1838*.¹ Today, Local Government is constituted and primarily regulated by the *Local Government Act 1995* but there are many other legislative instruments which impact the way Local Governments operate in their diverse array of activities.

Local Governments are a key democratic institution in Western Australia’s local communities. Councils have well-established relationships with the communities they serve and represent, local businesses and organisations as well as other spheres of government.²

Services provided by the 140 Local Governments in Western Australia include the traditional roads and waste collection but also now extend to recreation, medical services and other human services.³

¹ WALGA (2011a)

² Aulich *et al* (2011) Volume 2 p13

³ PricewaterhouseCoopers (2006)

All Local Governments throughout Western Australia continually strive to provide the highest quality services within the constraints of Local Government revenue streams, Australia's vertical fiscal imbalance and ongoing cost-shifting from other spheres of Government, all of which are well documented by the 2003 Hawker Report⁴ and many reports on Local Government finances before and since.⁵

About Local Government in Perth

There are 30 Local Governments in the Perth metropolitan region, as defined by Schedule 3 of the *Planning and Development Act 2005*. The Perth metropolitan area is characterised by relatively small Local Governments in the inner suburbs, larger Local Governments in the middle suburbs and large and growing Local Governments on the urban fringe.

The 30 Local Governments that make up metropolitan Perth vary considerably in terms of population, area and revenue. The Shire of Peppermint Grove, in Perth's western suburbs, is the smallest Local Government in Australia (by area) at 1.5 square kilometres and has a population of around 1,700 people.⁶ Conversely, the City of Stirling, in Perth's inner north, has an area greater than 100 square kilometres with close to 200,000 residents.⁷

Western Australian Local Government elections are held every two years with Elected Members being elected for four year terms. The *Local Government Act 1995* allows for the Mayor or President to be either directly elected for a four year term or to be elected by the Council, following the Local Government elections, for a two year term. Among Perth's 30 metropolitan Local Governments, 13 have Council elected Mayors or Presidents and 17, including the City of Perth, have directly elected Mayors.

Whether the Mayor or President is elected by the Council or directly by the community, the Mayor performs no 'executive' functions, as occurs in other countries and to an extent in other states. For example, the directly elected Lord Mayor of Brisbane is considered to be a 'semi-executive' Mayor.⁸

⁴ House of Representatives Standing Committee on Economics, Finance and Public Administration, (2003)

⁵ See also PricewaterhouseCoopers (2006) and Aulich *et al* (2011) Volume 1

⁶ WALGA (2011a)

⁷ WALGA (2011a)

⁸ Sansom (2010) (ed) p31

Metropolitan Local Government Review

In June 2011, the Minister for Local Government, Hon John Castrilli MLA, announced the appointment of a three-member, independent panel to examine “boundaries and governance models for local governments in the Perth metropolitan area.”⁹

Members of the Metropolitan Local Government Review Panel are:

- Professor Alan Robson (Chair), Vice-Chancellor of the University of Western Australia
- Dr Peter Tannock, former Vice-Chancellor of the University of Notre Dame Australia, and
- Dr Sue van Leeuwen, Chief Executive Officer of Leadership WA.

The terms of reference for the review are to:

- *“Identify current and anticipated specific regional, social, environmental and economic issues affecting, or likely to affect, the growth of metropolitan Perth in the next 50 years;*
- *Identify current and anticipated national and international factors likely to impact in the next 50 years;*
- *Research improved local government structures, and governance models and structures for the Perth metropolitan area, drawing on national and international experience and examining key issues relating to community representation, engagement, accountability and State imperatives among other things the panel may identify during the course of the review;*
- *Identify new local government boundaries and a resultant reduction in the overall number of local governments to better meet the needs of the community;*
- *Prepare options to establish the most effective local government structures and governance models that take into account matters identified through the review including, but not limited to, community engagement, patterns of demographic change, regional and State growth and international factors which are likely to impact; and,*
- *Present a limited list of achievable options together with a recommendation on the preferred option.”*¹⁰

As well as the establishment of the Metropolitan Local Government Review Panel, the Minister for Local Government also established two Advisory Groups to advise the Panel. One advisory group consists of the President and Deputy President of WALGA and the

⁹ Minister for Local Government (2011)

¹⁰ Minister for Local Government (2011)

other consists of the Directors General of the Department of Local Government and the Department of Planning.¹¹

WALGA Submission

The Association has developed this submission in response to the Metropolitan Local Government Review Panel's Terms of Reference and Issues Paper. This submission represents the Association's positions on a range of issues relevant to a specific process at a particular point in time. The positions taken in this paper should not be used for any purpose other than a response to the Metropolitan Local Government Review process.

The Association and the Local Government sector have embraced the opportunity to review Local Government activities and operations and the role of Local Government in Australia's Federation. It is always beneficial for any organisation or sector to consider its activities and whether improvements can be made.

There are opportunities to conduct empirically based studies to build on the significant work that has been undertaken by all parties with an interest in Local Government reform. Further work could be undertaken in relation to optimal population levels of Local Governments, optimal service delivery arrangements and appropriate community representation at all levels of government.

Given the limited timeframe of the Metropolitan Local Government Review, the Association has not undertaken empirical research of this nature.

WALGA Engagement

The Association has been, and continues to be, actively engaging with member Local Governments throughout the entirety of the Metropolitan Local Government Review process. All information provided to the Local Government sector and the Metropolitan Local Government Review Panel, including this submission, has undergone a rigorous consultation process.

The Association's engagement with Local Governments has included the formation of a Policy Forum – the President's Advisory Group – to consider the Review, two open forums, numerous focus groups and ongoing meetings and discussions with Local Government representatives. Further, this submission has been endorsed by the sector via a full round of Zone meetings and a Special State Council meeting.

¹¹ Minister for Local Government (2011)

President's Advisory Group

To assist and guide the President and Deputy President of WALGA in their advisory role to the panel, the WALGA President, Mayor Troy Pickard, established the President's Advisory Group (PAG).

The PAG consists of the WALGA President and Deputy President, a State Councillor from each metropolitan Zone of WALGA and five metropolitan Chief Executive Officers including the President and Deputy President of the LGMA (Local Government Managers Australia) WA Division.

A key aspect of the Association's engagement with the sector is to provide Councils in the metropolitan area the opportunity of hosting a meeting of the President's Advisory Group. By hosting a PAG meeting, Local Governments, through their Mayor or President and Chief Executive Officer, are able to present to the meeting and offer their insights into the Metropolitan Governance Review process.

The insights gained from visiting metropolitan Local Governments provided invaluable input into the PAG's deliberative processes and played a significant role in shaping the Association's submission to the Panel.

Visioning Forum

To assist in the development of a shared understanding of possibilities for the future governance of Perth, the Association held a visioning forum in August 2011. The forum, *Envisioning Metropolitan Local Governance: A Conversation on the Future of Local Governance in Greater Perth*, was facilitated by internationally renowned visioning practitioner, Steven Ames. All metropolitan Mayors or Presidents and Local Government Chief Executive Officers, along with the President's Advisory Group, were invited to attend and participate in the visioning forum.

The comments from the visioning forum participants have guided and shaped the conversation about the governance and government of the Perth metropolitan region. Outcomes from the forum have had significant input into the Association's policy development and submission processes.

Focus Groups

A key initiative of the President's Advisory Group was to hold focus groups with representatives from Local Government to discuss their expectations and preferred outcomes in relation to the Metropolitan Local Government Review. A major aim of the

focus groups was for the Association to gain access to the ideas and points of view of a cross-section of the talented and dedicated people, past and present, in both elected and appointed roles, that make up, or once made up, the Local Government sector in Western Australia.

Focus groups were held with former Mayors and Presidents, past Presidents of Local Government Associations, Chief Executive Officers with interstate or international experience, young Elected Members and officers and representatives from Local Governments bordering the metropolitan region.

There were three key themes that emerged from the focus group discussions:

- The need to identify the roles and responsibilities of State and Local Government and to ensure that State and Local Governments are appropriately resourced to deliver services to the community
- The need to research and gather evidence that identifies the optimum size, function and form of Local Government, and
- The need to acknowledge that “local” is not negotiable in Local Government; appropriate mechanisms need to remain available for communities to stay connected with Local Government.

The insights gained from the focus group sessions were invaluable to the development of the Association’s submission to the Review.

Models Forum

The Association engaged consultants, Conway Davy and Planning Context, to develop four alternative governance models for Local Government in metropolitan Perth.

The 30 Local Governments in metropolitan Perth were invited to a forum, held on 16 January 2012, to consider the models.

The Governance Models and outcomes from the forum are discussed below, commencing on page 55.

Zone and State Council Process

The Association has undertaken a thorough and consultative Zone and State Council process to ensure that its submission has broad support from the Local Government sector. This submission was endorsed at the 30 January 2012 Special State Council meeting.

Context

About Perth

Perth, often referred to as the ‘most isolated city in the world’ is the capital city of Western Australia, Australia’s largest state. The state of Western Australia accounts for approximately one third of the continent of Australia and is home to approximately 2.2 million people. Three quarters of the population of Western Australia – approximately 1.7 million people – live in the Perth metropolitan region.¹²

In Australia, unlike most other countries, towns were created first and rural populations followed.¹³ Perth began in 1829 as the administrative base for the Swan River Colony. This history, coupled with the harsh Western Australian climate, has contributed to a concentration of Western Australia’s population and wealth in the Perth metropolitan region.

Clearly, the economic and social success of Western Australia is intertwined with the success of the Perth metropolitan region.

Governance of Metropolitan Perth

The governance of metropolitan regions in Australia’s federal system of government is undertaken, to varying degrees, by all three spheres of government: Federal, State and Local.

Federal Government

The Federal Government has historically played only a limited direct role in the governance of metropolitan regions. The indirect role of the Federal Government in shaping Australian cities is significant however, and is manifest through: “direct investment in housing and social and economic infrastructure and economic policy settings; property ownership; labour market regulation, immigration and taxation policies; and regulatory functions”.¹⁴

Recently, the Federal Government has taken a greater interest in Australian cities with the establishment of a Major Cities Unit within the Department of Infrastructure and Transport. Further evidence of the Federal Government’s renewed interest in Australian

¹² WALGA (2012) p28

¹³ Kelly (2010b) p8

¹⁴ Commonwealth of Australia (2011) p11

cities is demonstrated by the creation of Regional Development Australia (RDA) Committees.

State Government

The Australian Constitution establishes that State and Territory Governments have principal responsibility for planning and managing cities.¹⁵ For this reason, and due to the highly urbanised population distribution of all Australian States, State and Territory Governments play the most important role in the governance of metropolitan regions in Australia.

Similar to other Australian State capitals, metropolitan governance in Perth is primarily a function of the Western Australian State Government. Key reasons for the dominance of the State Government include the economic significance of Perth for the wellbeing and economic success of the state and the primacy of Perth as home to three quarters of Western Australia's population.

A principal player in terms of metropolitan governance of the Perth metropolitan region is the Western Australian Planning Commission (WAPC). The WAPC's plan for the Perth metropolitan and Peel regions, which was released in August 2010, is *Directions 2031 and Beyond: Metropolitan Planning beyond the Horizon*.

Directions 2031 provides guidance on the following key issues:

1. *"How we provide for a growing population whilst ensuring that we live within available land, water and energy resources;*
2. *Where development should be focused and what patterns of land use and transport will best support this development pattern;*
3. *What areas we need to protect so that we retain high quality natural environments and resources; and*
4. *What infrastructure we need to support our growth."*¹⁶

The objectives of *Directions 2031* are for Perth to be a city which is liveable, prosperous, accessible, sustainable and responsible.¹⁷

A key challenge for the WAPC and the Department of Planning will be the successful implementation of *Directions 2031* at the regional, sub-regional and local levels. Implementation of the master plan for Perth will require coordination across various

¹⁵ Commonwealth of Australia (2011) p11

¹⁶ Western Australian Planning Commission (WAPC) (2010) p1

¹⁷ Western Australian Planning Commission (WAPC) (2010) p2

State Government departments and with Local Government. It is crucial that the Department of Planning is appropriately resourced to drive the implementation of *Directions 2031* through all State Government agencies and Local Governments, while respecting the desires of local communities.

Other State Government agencies, as well as the 30 Local Governments in metropolitan Perth, also have a significant stake in the governance of the Perth metropolitan area. Local Government and six key State Government departments – Planning, Environment and Conservation, Housing, State Development, Water and Transport – are all represented on the WAPC.

Beyond spatial planning, the State Government also has a significant role in terms of service and infrastructure provision to metropolitan Perth. Through departments, agencies, authorities and publically owned corporations, the State Government provides Perth's major transport infrastructure, public transport services, water, electricity and other utilities and public housing.

Local Government

Local Governments, which are not recognised in Australia's Constitution, are a creation of state legislation and are therefore restricted to performing a limited range of functions. Western Australia's system of Local Government is constituted by the *Local Government Act 1995*. Typically, Local Governments, as a result of fragmentation and limited scope, find it difficult to play a significant role in metropolitan planning.¹⁸

There are 30 Local Governments in the Perth metropolitan region ranging in size from small to relatively large. Generally Local Governments in the inner suburbs are relatively small and Local Governments on the urban fringe are relatively large and growing as the metropolitan region pushes outwards.

Local Governments also have a role in metropolitan governance beyond input into regional plans such as *Directions 2031*. Local Governments' most significant spatial planning role is sub-regional, particularly in place-making and place-managing, and shaping local communities. This is further achieved through Local Government planning schemes, neighbourhood 'master-plans' as well as other Council policies and decisions.

Local Government is the key provider of community facilities in metropolitan Perth. Local Government facilities include parks and recreation facilities, libraries, local roads, footpaths and streetlights. Local Government services to the community include waste

¹⁸ Sansom (2009) p8

and recycling services, animal registration and human services such as providing facilities for youth, aged and disabled residents.

In Metropolitan Perth, Local Governments have established Regional Local Governments to undertake a range of services – most predominantly waste – on a regional basis.

Metropolitan Governance Success Criteria

It is important that stakeholders to the discussion involving the governance structures and arrangements of metropolitan Perth have a shared understanding of criteria for successful metropolitan governance.

This is crucial given the emergence of urban regions as the principle units in the world economy.¹⁹ Increasingly, significant international economic relationships, which were previously country to country, are progressively becoming city to city. The manifestations of this trend are paramount for Perth, given the vastness of Western Australia and the high proportion of the state's population that lives in the Perth metropolitan region.

Since government and governance structures exist to serve societal and social outcomes, the intended benefits of the Metropolitan Local Government Review process must be focussed on benefiting the communities and people of Perth. Cities are about people first and the built environment second.

In these terms, the review process may focus on liveability as a principle goal. In liveability rankings, Perth is consistently ranked among the top ten cities in international studies.²⁰ Given Perth's consistent performance in liveability rankings, it could be argued that liveability rankings do not provide a coherent and valid justification for significant structural change.

Further, liveability encompasses factors that are not necessarily a product of metropolitan governance or Local Government structures. It has also been argued that liveability rankings focus on the lifestyles and preferences of the wealthy with little regard to the liveability of cities for those struggling with the cost of living, long commutes, social isolation or without access to basic services.²¹ This issue is particularly acute in Perth where the income distribution is the broadest in Australia.²²

¹⁹ Organisation for Economic Cooperation and Development (OECD) (2000)

²⁰ Planning Context (2011) p7

²¹ Kelly and Morrow (2010)

²² Trenwith (2011)

It is important that the Metropolitan Local Government Review focuses on ensuring appropriate governance for Perth on behalf of all residents and not only the wealthy and socially mobile who may be the principal targets and beneficiaries of liveability rankings.

The Western Australian Planning Commission's (WAPC) vision for Perth, defined by *Directions 2031 and Beyond: Metropolitan Planning beyond the Horizon*, is for a city which is Liveable, Prosperous, Accessible, Sustainable and Responsible.²³

The Organisation for Economic Cooperation and Development's (OECD) principles of metropolitan governance provide criteria used to evaluate the success of metropolitan governance arrangements. The 12 principles are summarised in the following table.

OECD's Principles of Metropolitan Governance²⁴	
Coherency	Governance must be intelligible to the community
Competitiveness	Governance must be associated with competitiveness, which requires investment in social and human development and appropriate hard and soft infrastructure
Coordination	Coordination among and between governments and other actors must be a priority
Equity	Equity across the region must be a priority
Fiscal Probity	Cost of governing should be reflective of benefit received
Flexibility	Institutions must be capable of adapting to economic, environmental and societal trends
Holism	The urban region must be considered holistically
Particularity	Policy must suit the circumstances of the urban region
Participation	Governance must allow for community participation
Social, not sectoral	Objectives of metropolitan governance should be focussed on society as a whole – not on sectors of the community
Subsidiarity	Services must be delivered by the most local level that has sufficient scale to deliver them
Sustainability	Economic, social and environmental objectives must be integrated

In undertaking the Metropolitan Local Government Review, it is important that the principles above, together with liveability as a key objective, underpin the discussion.²⁵

²³ Western Australian Planning Commission (WAPC) (2010) p2

²⁴ Organisation for Economic Cooperation and Development (OECD) (2000)

Furthermore, it is important that all parties to the discussion about the future governance of the Perth region do not focus entirely on *structure*. While governance and government structures will necessarily be under consideration, studies show that focussing on structure alone can prove to be a distraction and structural reform does not, in itself, guarantee successful governance outcomes.²⁶

Challenges and Trends

The Metropolitan Local Government Review Panel has been requested to consider the challenges that are likely to confront Perth for a 50 year timeframe. Clearly, forecasting over a 50 year timeframe will be challenging but it is important that there is a general understanding of the issues that cities, and particularly Perth, will likely face.

A number of issues are countenanced briefly below. The challenges discussed below are not comprehensive and all nations and cities are likely to face challenges over a 50 year timeframe that have not yet been contemplated.

It is important to note that the challenges that Perth will face are not solely Local Government challenges. All governments, the private and not-for-profit sectors and citizens, will be required to work together to address the challenges of the twenty-first century. The consequences of some challenges will be manifest at the local level and the continued responsiveness of Local Government will be crucial to ensuring Perth's high standard of liveability continues.

Economy

Economically, Australia in 2011 is performing well in comparison to other countries. Western Australia and Perth are key beneficiaries of Australia's current prosperity due in part to the resources boom. Perth is currently ranked first nationally and 17th internationally in terms of per capita gross domestic product (GPD), emphasising the significance of Perth to the broader economy.²⁷ It is important that Perth capitalises on its current position to establish a successful city into the future.

There will be challenges for the Perth region economically throughout the next 20 to 50 years. Among these will be integrated transport and infrastructure planning to ensure productivity is not constrained by bottlenecks.

²⁵ WALGA (2011b)

²⁶ Kelly (2010a) p4

²⁷ Commonwealth of Australia (2010) p18

Another looming challenge for Perth relates to skills shortages and the need to attract and retain young and educated workers.

Society

Perhaps the greatest challenge for Perth to address during the next 20 to 50 years will be sustained population growth as Perth grows to an estimated 3.5 million people by 2050.²⁸ This growth will be partly driven by the resource sector's demand for skilled labour.

Perth will also have to address the consequences of an ageing population and demographic change in common with most of the developed world. A significant consequence of the ageing population relates to the increasing proportion of people likely to be on fixed incomes, adding pressure to government revenue collection capacity while demand for social services grows. Another aspect of an ageing population is likely to be a desire for residents to 'age in place' in their communities. It will be important that there is a range of housing stock in communities for this to occur. Local Governments have the flexibility to cater for the desires of their communities in a responsible and responsive way.

Other social issues include urban sprawl, housing diversity and transport congestion.

Environment

Perth, like all urban regions, will face environmental challenges during the next 20 to 50 years. The consequences of climate change will have to be addressed. As the population of Perth grows there will be increased demand for resources including water and energy.

Issues of bio-diversity of the Swan Coastal Plain and food security will also be major considerations in to the future.

There will also be significant challenges for Perth in terms of waste management over the coming decades. In particular, key trends include:²⁹

- Increasing waste generation and increasing complexity of the waste stream
- Challenges associated with planning for future sites, changes in zoning, approval requirements and development of infrastructure
- Increasing role of the private sector in waste management
- Lack of State Government direction on waste management, and

²⁸ Committee for Perth (2011) p32

²⁹ Municipal Waste Advisory Council (2012)

- Increasing community and government expectations.

Metropolitan – Rural Connectivity

A further challenge to be considered is the connectivity between the metropolitan area and the rural hinterland. Transport corridors through the metropolitan area, particularly to ports and transport terminals, require significant consideration.

Response to Issues Paper

Responses to the questions contained in the Issues Paper are below. In some cases, questions are answered in conjunction with other questions.

1. *Do you think there is a need for better local government arrangements in metropolitan Perth? Why? Or why not?*
2. *If you think there is a need for a better local government system, what should the priorities of the new system be? What should its objectives be?*
3. *What are the best aspects of local government in its current form?*

There are a number of positive aspects of Local Government in Perth. Perhaps the most important aspect of Local Government is that it is *local*.

The sector endorsed vision of Local Government, articulated in the draft Systemic Sustainability Study report, states that “the core strength of Local Government lies in its representational base for the aspirations and expectations of local communities”.³⁰

Citizens have high levels of access to their Local Governments, both politically and administratively. Local Governments are able to respond to their communities’ desires and aspirations. Local Governments shape and manage communities and neighbourhoods.

Local Governments’ strategic planning, asset management practices and engagement with their communities are also strengths of the Local Government arrangements in metropolitan Perth.

There are always improvements that can be made to any system of government and Local Government is no exception. Many of the improvements that could be made to Local Governments in Western Australia require systemic change.

For example, there are legislative changes that would increase the flexibility with which Local Governments are able to serve their communities. Furthermore, there are a number of identified revenue constraints which limit Local Governments’ ability to serve their communities. Improvements are also required to intergovernmental relations and the coordination of government between and across Local Governments and state agencies.

³⁰ WALGA (2008b) pxii

These issues are addressed in the Critical Success Factors section of this submission commencing on page 40.

The objectives of any system of government should match its form. The Panel has been asked to consider both form and function simultaneously. If there are significant changes to form proposed, then these should be matched to changes in function. The reverse is also true. The principle that “form should follow function” is paramount.

4. *What is your vision for the future of the Perth metropolitan area?*

The WAPC’s vision for Perth, from *Directions 2031*, provides a reasonable vision for the Perth metropolitan area: for Perth to be a city which is Liveable, Prosperous, Accessible, Sustainable and Responsible.³¹

Beyond this, there should be increased coordination between governments of all levels to enhance the governance of the metropolitan area.

5. *What do you think are the biggest issues facing metropolitan Perth?*

A response to this question is provided above under Challenges and Trends on page 20.

6. *Do you think local government in metropolitan Perth is ready to face the demands and challenges of the next 50 years? If not, what do you think needs to be changed?*

7. *Do you think that local government in Perth will be able to deal with national and international issues such as climate change and growing populations?*

8. *Do you think local government should be responsible for managing these issues, or should they be the responsibility of the State or federal governments?*

The issues that will confront governments over the next 50 years will be complex and often global in cause and reach. The consequences from some of these issues will clearly manifest at the local level and, as a result, Local Governments will have to play a role in responding to these issues.

Local Governments in Perth are well placed to face major challenges, as they have done throughout their existence, by virtue of their responsiveness and connectedness to the community. Local Governments are not, and will not, be equipped to deal with all issues singlehandedly. Other spheres of government, together with the community and the private sector will have a role to play in ensuring Perth continues to thrive into the future.

³¹ Western Australian Planning Commission (WAPC) (2010) p2

A key aspect of resolving these types of issues will be improved and increased collaboration between governments. This may require a new paradigm to emerge, where all spheres of government, corporations, not-for-profit organisations and citizens are viewed as part of a complex adaptive system.³² In this new paradigm, the adaptive ability of governments, at all levels, to work together and with other players will be the greatest determinant of success.

Local Government will play an increased role in this paradigm as the facilitator of robust partnerships between different spheres of government, community organisations and the private sector. This does not necessarily imply that Local Governments will play a dominant role in addressing particular issues, but Local Governments are in a unique position to capitalise on their ability to respond to community concerns as democratically elected bodies in the community.³³

In many cases Local Governments will play the role of facilitator, connector or advocate for community concerns. This type of partnership approach is particularly relevant when consequences of regional, national and even global issues are manifested locally in communities.

It is crucial that intergovernmental relationships continue to improve towards a robust partnership approach to ensure that Perth continues to thrive into the future. A detailed discussion on intergovernmental relations is included as a Critical Success Factor, commencing on page 40.

9. *Who should pay for the social and physical infrastructure and services required to cope with these issues?*

In most cases, the beneficiaries of the social and physical infrastructure and services required should pay through the taxation system. In determining how and how much individuals, companies and others should be charged for particular services and infrastructure, attention should be paid to the principles of taxation: equity, benefit, ability to pay, efficiency and simplicity.³⁴

As Local Governments are limited in their ability to collect revenue as a result of Australia's vertical fiscal imbalance, there may be a need for funding for these types of issues to come from other spheres of government. In many cases there will be a need for horizontal equalisation between states, regions and communities. This will be

³² Benington (2011) p16

³³ Grady et al (2011) p69

³⁴ WALGA (2009) p2

particularly pertinent when the cause of a problem is widespread, possibly even global, but the consequences are manifest in particular communities.

Australia’s vertical fiscal imbalance is demonstrated by the following table.

Relative Shares of Tax, Expenditure and Public Assets: Federal, State and Local Government³⁵			
	Federal	State	Local
Percent of Taxes	81.7	15.3	3
Percent of Expenditure	35	54	11
Percent of Public Assets	12.9	51.6	35.6

10. *Is metropolitan Perth in a position to be an effective international competitor? If not, what would you change?*

Perth is in a very strong position to be a successful international competitor now and into the foreseeable future. Reasons for Perth’s strong position include its enviable economic position coupled with lifestyle and environmental factors.

Perth’s recent economic growth, driven by the resources sector, has been considerably strong. Over the last 20 years Western Australia has emerged as a global energy hub feeding the expansion of major economies in Asia.³⁶ This growth is demonstrated by the increasing corporate presence in Perth, now home to more company headquarters than ever before.³⁷ Also in Perth’s favour is its close geographic proximity to the growing economies of Asia.

Lifestyle factors, the natural environment and climate also play a role in Perth’s attractiveness as a city to live, work, do business or visit.

As one economic development scholar argues:

“Perth has the components of greatness in its reach: a commercially and geographically strategic position in the new economic order; wealth that looks sustainable in the medium and perhaps the long term; abundant resources; a talented and cosmopolitan population; and the incalculable advantage of being a city in Australia.”³⁸

³⁵ PricewaterhouseCoopers (2009)

³⁶ Committee for Perth (2011) p12

³⁷ Committee for Perth (2011) p12

³⁸ Anholt (unspecified) p1

The Perth Airport is very important to the international competitiveness of Perth as the first experience of the city for most visitors. Local Government, through the Perth Airports Municipalities Group Inc., has made a positive contribution to managing and improving the interface between communities and the airport.

Clearly there will be major challenges throughout the twenty-first century to ensure that Perth fulfils its potential, including the provision of economic infrastructure in a timely manner. To address these challenges, governments at all levels will need to cooperate and work together with the private and non-government sectors, in a robust and meaningful way.

11. *What do you think about the other governance models discussed here, such as those adopted in Auckland or Vancouver? Which aspects of these models would work in Perth? Which aspects would not work?*
12. *Do you know of any governance systems that work well elsewhere, either in Australia or overseas and that might work well in Perth?*

The Association recently produced an Information Paper which considered the metropolitan governance models in place in a number of other jurisdictions internationally.³⁹ A key finding of the paper was that the metropolitan regions considered were all trying to resolve the same fundamental dilemma: all governance models aim to ensure responsive services and democratic representation at a community level and coordinated planning and service delivery at the metropolitan region level.⁴⁰

There are a number of key differences between Perth and other cities sometimes used for comparison, such as Auckland or Vancouver. In many cases, services provided by Local Governments or metropolitan-region bodies in other jurisdictions are provided in Perth by the State Government. For example, in Perth, water, sewerage, public transport, major infrastructure, policing and social housing are the domain of the State Government. For a metropolitan region government of some kind to be adopted in Perth there would be an expectation that services would be devolved from the State Government to the newly created entity.

Devolution of responsibilities from the State Government to Local Government or to a newly formed metropolitan regional government would be accompanied by its own challenges. There could be concerns regarding horizontal equity across the metropolitan

³⁹ WALGA (2011b)

⁴⁰ WALGA (2011b) p21

region or equity in service delivery between the metropolitan region and its hinterland outside the metropolitan region boundary.⁴¹

There should be caution in comparing Perth to other cities, such as Auckland, London or Birmingham, which operate in a two-tier government structure. The establishment of a Local Government encompassing the whole metropolitan region may have greater appeal in a two-tier government system than in a three-tier system. Whether a metropolitan region model would be applicable in Perth, where there are already three spheres of government, and where the State Government provides the majority of metropolitan-region services, requires thorough consideration.

While there are significant differences between Perth and other cities, Perth shares a very important similarity with all metropolitan regions: the challenge of finding the right metropolitan governance model. The challenge for Perth is to develop and implement the ideal metropolitan governance arrangements for the *Perth* metropolitan region.

This may require the development of a *Perth Model* of metropolitan governance.

13. *Should more be done by local governments to engage with the community?*

Community engagement is rightly a major priority of Local Government. Community engagement is also a major strength of Local Government. No other sphere of government is as open or transparent as Local Government.

Members of the public are entitled to attend Council meetings to listen to debate and ask questions of the Local Government and are able to access a range of documents detailing the strategic and financial position of the Local Government.

Further, there are requirements that the community is engaged during the development of a Local Government's Strategic Community Plan.⁴²

Community members also have direct access to Elected Members as the democratically elected representatives of their community. Again, this access is not matched by other spheres of government.

There has been commentary recently that voter turnout in Local Government elections provides an indicator of community engagement in the affairs of their Council. This argument is simplistic: voter turnout is one indicator of community engagement with their Council. Given the high levels of access that community members have to Elected

⁴¹ WALGA (2011b) p19

⁴² Department of Local Government (2010a)

Members, the Council and Local Government administrations, voting is arguably less important at the local level than for other spheres of government.

Given the extensive timeframe under consideration in this review, consideration must be given to community engagement through new and evolving media. In the future, and particularly for the emerging generations, community engagement is likely to increasingly occur online.

Local Governments are at the forefront of community engagement through information technology channels. The development of *pin2fix* by the Local Government sector demonstrates the willingness of Local Governments to responsively and innovatively engage with their communities.

Pin2fix is a digital application that enables the community to use online and smart phone technology to make direct requests of Local Governments. These requests could include redressing graffiti, road and pavement damage or problems with public facilities and amenities. The system provides Local Governments the opportunity to report back when the requests are completed and highlight the services being undertaken for the community.

In addition to the reporting function, the location positioning technology used in *pin2fix* enables individual Local Governments to communicate directly to system users in their area through a dedicated message field. These messages could be about community activities such as festivals or events, new offers such as rate payment incentives, critical decisions of Council or about encouraging community participation in consultation processes.

In short, Local Governments currently lead the way with government engagement of the community.

14. *Should voting be compulsory for local government elections?*

The Association's position is that voting in Local Government elections should remain voluntary. The Association developed a discussion paper in 2008 and surveyed all Local Governments on their appetite for compulsory voting.⁴³ A majority of Local Governments were opposed to compulsory voting, with many citing the cost as the principal reason. Based on the survey results, in 2008 the WALGA State Council adopted a formal position supporting the continuation of voluntary voting in the Local Government sector.

⁴³ WALGA (2008c)

Compulsory voting is only one aspect of the electoral system and should not be considered in isolation. Other considerations include the method of voting and the frequency of elections.

Should there be efforts to make voting in Local Government elections compulsory, a full and detailed review of the Local Government electoral system should be undertaken.

15. *Does metropolitan Perth have too many local governments? What would be the advantages and disadvantages in reducing the number of local governments?*

These questions address the issue of Local Government structural reform. There are advantages and disadvantages with structural reform, which will always involve balancing a number of competing factors.

Clearly there would be disadvantages associated with Local Government structural reform: there are costs associated with any change process. Typically costs will be associated with dislocation, establishing new organisational cultures and systems and a loss of representation for the community.⁴⁴ Other costs may be borne by the community in terms of reduced access to elected representatives and further distances to travel to service centres.

It is often asserted that structural reform will bring about increased efficiency, and therefore cost savings, through improved economies of scale. However, there is limited evidence that structural reform leads to financial savings for Local Governments and communities.⁴⁵ Financial sustainability of Local Governments is more a result of policy decisions than a result of size or population.

Another assertion related to structural reform is that *economies of scope* will be achieved by larger organisations. This is also referred to as *strategic capacity*. While there is limited evidence that direct or indirect savings will be realised, there is evidence that larger units of Local Government may benefit from increased capacity to undertake new or varied functions.⁴⁶

There is also evidence that strategic capacity can be achieved from regional collaboration without structural reform.⁴⁷ This is demonstrated in Western Australia by the establishment of Regional Local Governments to undertake waste and other services and by joint purchasing arrangements undertaken by WALGA.

⁴⁴ Aulich et al (2011) Vol 1 p10

⁴⁵ Aulich et al (2011) Vol 1 p10

⁴⁶ Aulich et al (2011) Vol 1 p10

⁴⁷ Aulich et al (2011) Vol 1 p10

Any argument towards structural reform of Local Governments based on improved efficiencies or increased strategic capacity must acknowledge that there are disadvantages associated with larger Local Government in terms of community engagement, participation and access.

It is crucial for the success of any change process, and particularly for Local Government structural change, that there is broad and deep support for any structural reform to proceed.

16. *If the boundaries and or roles of local governments are changed, what should be the criteria for doing so? Are the LGAB's factors the right criteria?*

The first and most important criterion for changes to Local Government boundaries is deep and broad community support. Without the affected communities embracing the change, the newly created Local Government entity may struggle to merge administrative and political systems and develop a coherent community of interest.

In some cases, following amalgamations, there have been community movements for de-amalgamation based on a strong feeling of loss of community representation. The de-amalgamation of the Delatite Shire in Victoria represents an example of a high profile, and ultimately successful, campaign for de-amalgamation in Australia.⁴⁸

The Delatite Shire de-amalgamation demonstrates that poorly planned amalgamations undertaken on cost saving grounds, without a strategic approach or adequate consultation, will result in poor outcomes and disaffected communities.⁴⁹

A prominent local example of restructuring to create more Local Governments was the establishment of the Towns of Cambridge, Vincent and Victoria Park from the previous City of Perth in 1994.

To ensure that any Local Government boundary changes, including amalgamations, are successful, the current Local Government Advisory Board criteria should be considered in conjunction with economic, social, environmental and organisational sustainability principles. Thorough and strategic consideration of these criteria, underpinned by broad community consultation, is crucial for future Local Governments to represent coherent communities of interest.

⁴⁸ See Chen (2002)

⁴⁹ Aulich et al (2011)

17. *Should local government boundaries be set by an independent body and reviewed at regular intervals?*

The Metropolitan Local Government Review Panel Issues Paper suggests that Local Government boundaries could be reviewed at regular intervals by an independent body.⁵⁰ The Panel's Issues Paper also implies a comparison between electoral boundaries and Local Governments.

Such a comparison is inappropriate: Local Governments are a legitimate sphere of government in Australia's democratic system. Conversely, electoral boundaries are an administrative tool to ensure that each citizen's vote is roughly equal when electing a representative to the House of Representatives or the Legislative Assembly.

However, while Local Governments are not equivalent to electoral boundaries, it may be appropriate for an independent body to determine Local Government boundaries to remove local politics from the process. An independent body undertaking Local Government boundary reviews should utilise criteria including sustainability and communities of interest.

18. *If Perth's local government boundaries do not change, how do you think services to communities could be improved?*

The section on Critical Success Factors, commencing on page 40, should be considered as a response to this question.

Briefly, services to communities will be improved by greater collaboration between governments and other players in service delivery. A robust, partnership approach should be adopted between Local Governments and between State Government and the Local Government sector.

19. *What do you consider are the main roles and responsibilities of local government?*

20. *In an urban area like Perth, which functions should belong to the State or Commonwealth governments?*

21. *Are there any State provided services that local government might be better placed to provide?*

Local Governments in Australia have two principle dimensions: delivery and facilitation of local services and control of local decisions.⁵¹

⁵⁰ Metropolitan Local Government Review Panel (2011) p12

⁵¹ Local Government Advisory Board (2006) p7

Local Governments' establishing and guiding legislation, the *Local Government Act 1995*, was introduced under the principle of 'general competence'. Under this principle, Local Governments are empowered to meet the aspirations and expectations of their communities within legislative constraints.

Beyond the principle of 'general competence', there are a number of fundamental Local Government roles. Local Governments:

- Are responsible for long-term strategic planning and stewardship of community assets
- Develop and enforce laws and policies
- Represent and advocate for their communities
- Deliver services or enable services to be delivered to their communities
- Are place makers, place shapers and place managers, and
- Develop communities and create neighbourhoods.

In addressing questions about the transfer of traditional functions between spheres of government, the principle of 'form follows function' should be adhered to. Furthermore, if traditional State Government services are transferred to Local Government, corresponding funding streams must also be transferred.

There are a number of opportunities for Local Governments to take over services currently delivered by the State Government. While further work should be undertaken in this area, greater delivery of human services, including community and disability services could be undertaken by Local Governments on behalf of the State Government.

Under this model and the principle of 'subsidiarity', Local Governments would be responsible for facilitating service delivery in communities and the State Government would maintain control of the overarching policy direction. A further option would be for the State Government to provide funding to Local Governments or regional bodies to achieve State Government policy outcomes at the local, sub-regional or regional level.

22. *What do you consider to be the principles of good governance at a local level?*

Good governance is very important for governments because governance is at the heart of what government does.⁵² It is important that the distinction between 'governance' and 'government' is clearly defined. "Governance is the process by which we collectively solve our problems and meet our society's needs. Government is the instrument we

⁵² Pillora and McKinlay (2011) p4

use”.⁵³ Governance in this context can be taken to refer to the processes, protocols, conduct and relationships involved in Local Government decision making and implementation.⁵⁴

Good governance principles are important at any level of government but are perhaps more relevant at the local level, where community scrutiny is intensified. Local Government is vitally important to communities all over Western Australia. A failure of governance at the Local Government level can significantly impact the communities involved and invariably affects the standing of the sector.

It is very important that Local Governments adhere to a high standard of governance principles and practices to ensure public money is expended responsibly and Local Governments maintain the confidence of the community.

Good governance in Local Government is transparent, responsive, accountable, democratic and equitable. Sound decision-making in Local Government is based on community engagement, comprehensive strategic planning and thorough, professional advice. The implementation of Council policy and decisions should be based on a clear distinction of roles and responsibilities.

23. *Do you think there should be greater State government oversight of issues, such as key performance indicators and senior local government employee appointments and salaries?*

The *Local Government Act 1995* was established under the principle of ‘general competence’. That is, Local Governments were able to act to serve their communities as long as the Act, or any other legislation, was not contravened. In fulfilling their service delivery role, Local Governments in Western Australia must abide by hundreds of legislative instruments, guidelines and standards as well as the *Local Government Act 1995*.

Local Governments acting with general competence has served the communities of Western Australia well because Local Governments are able to innovate to provide services in an adaptive and flexible way.

The Association strongly advocates for Councils, as a legitimate sphere of government in Australia’s Federation, to make determinations on what services should be provided to the community and how these services should be delivered.

⁵³ Osborne and Gaebler (1992) p24

⁵⁴ Exiner and the Good Governance Advisory Group (2004) p5

There is a role for regulation and appropriate accountability mechanisms, given that public money is being expended. There is also a role for a regulatory agency such as the Department of Local Government to ensure that public money is expended in accordance with legislation. It should be remembered that the greatest accountability mechanism for any government, including Local Government, is electoral accountability.

There is a point where Local Governments may be over-regulated to the detriment of services or representation to the community. The regulation of executive salaries, circumventing market signals, may hinder service delivery to the community in the long term if the regulation of salaries means that Local Governments are no longer able to attract a suitable calibre of candidates to senior roles.

The focus of the State Government should be directed towards building Local Government capacity to ensure that Local Governments are best equipped to fulfil their legislative and regulatory functions without direct State Government intervention.

One method for the achievement of greater capacity building of the Local Government sector would be for a Local Government Commission to be established. This would allow the Department of Local Government to primarily focus on its regulatory function – carriage of the *Local Government Act 1995* – and would allow the newly established Local Government Commission to focus on building Local Government capacity.

The establishment of a Local Government Commission is explored as a Critical Success Factor on page 42.

24. *If you could make a recommendation to the Minister for Local Government about the best way to organise local government in metropolitan Perth, what would you say?*

The Critical Success Factors, commencing on page 40, provide an analysis of the key issues that must be addressed for Local Government to be strengthened in Perth and Western Australia.

It is also crucial that any reform of the Local Government sector, whether structural or functional, is underpinned by a robust transition process. The transition process must involve comprehensive Local Government and community engagement. The transition process is comprehensively addressed below, commencing on page 62.

Another important principle is that coordination and cooperation between all spheres of governments is based on a robust partnership approach. The Association believes that intergovernmental relations between the State Government and the Local Government

sector could be strengthened. Intergovernmental Relations is addressed as a Critical Success Factor below, commencing on page 40.

Local Government Questions

25 *What do you think are the biggest issues facing local government in metropolitan Perth?*

The three biggest issues that all Local Governments face are related to revenue constraints, legislative issues and intergovernmental relations.

These issues are addressed under Critical Success Factors on page 40.

26 *What changes or improvements in arrangements are needed between the State and local government sector for governing Perth?*

Improved intergovernmental relations are crucial for the successful governance and governing of the Perth metropolitan area. This issue is thoroughly addressed as a Critical Success Factor on page 40.

27 *What services should local government provide in the metropolitan area?*

Under the principle of ‘general competence’ in the *Local Government Act 1995*, Local Governments should be empowered to provide services matching the aspirations and expectations of their communities.

If the service delivery of Local Government is expanded as an outcome of this process, funding streams linked to the relevant services must also be expanded.

The Association’s response to *question 21* on page 32 can be considered as a response to this question.

28 *How should local government be financed to provide those services?*

Simply, services provided by government for the public should be funded by the public through the taxation system. Local Governments, as a sphere of government, are funded through Australia’s tax and transfer system. Local Government revenue comes primarily from three main sources: rates, grants from other spheres of government and fees and charges.⁵⁵

⁵⁵ WALGA (2008a) p78

There are five principles of taxation that must be balanced by governments in determining the nature, structure and distribution of the taxation system. The five principles of taxation are:⁵⁶

Equity	Taxpayers with the same income pay the same tax, wealthier taxpayers pay more tax
Benefit	The concept that there should be some relationship between the tax paid and the benefits received. The benefits should not necessarily equal the tax paid
Ability to pay	In levying taxes the ability of the taxpayer to pay the tax must be taken into account
Efficiency	Does the tax produce the desired results? If tax is designed to change consumers' behaviour, and the behaviour changes, the tax is deemed efficient
Simplicity	The tax must be understandable, hard to avoid, and easy to collect

Rating, as a taxation mechanism, meets the principles described above. As rating is based on property valuations, property owners will pay different amounts. There are benefits associated with rates in terms of Local Government services. The ability of the ratepayer to pay is taken into account through each Council's deliberative process. Rates are not designed to change behaviour so cannot be considered inefficient.⁵⁷ Rates meet the principle of simplicity because they are understandable, hard to avoid and easy to collect.

The taxation system must also take into account equity between states, regions and sub-regions. For this purpose, the Western Australian Local Government Grants Commission gives regard to equity between Local Government areas through the distribution of Financial Assistance Grants. The Grants Commission is charged with ensuring that "Monies are allocated to councils on the basis of horizontal equalisation, to assist each Local Government in the State in being able to function at a standard not lower than the average of other Local Governments".⁵⁸

In short, Local Governments should be funded through the tax and transfer system, either via rates, or transfers from other spheres of Government, to fund Local Government services.

⁵⁶ WALGA (2009) p2

⁵⁷ Local Government Association of South Australia (2001) p31

⁵⁸ Western Australian Local Government Grants Commission (2004) pvii

29 *Are there any State-provided services that local government might be better placed to provide? Conversely, are there any local government provided services which the State might be better placed to provide?*

There will always be discussions at the margins of any federal governance system about which sphere of government is best placed to provide particular services. The principle of 'subsidiarity' should be adhered to in considering these types of issues.

Further, duplication of services or functions should be avoided whenever possible. Duplication is inefficient and represents a significant opportunity cost for citizens whose tax dollars could be expended or invested elsewhere.

The role of Local Governments as service enablers and facilitators is crucial in ensuring services are provided to the community efficiently. Local Governments, through their links to and within the community, are well placed to provide required services, or facilitate service provision through non-profit organisations, the private sector or other government providers.

To reduce duplication, meaningful and robust partnerships are crucial across all spheres of government: between Local and State Government, between Local Governments and between State Government agencies.

A key example, which has been the focus of discussion recently, is the provision of waste management services for the Perth metropolitan area. Currently, waste collection is performed or facilitated at the local level and waste disposal is undertaken at the sub-regional level by Regional Local Governments. There is an argument that waste disposal would best be performed at the metropolitan-region level.⁵⁹ This could assist in increasing coordination between Local and State Government and improve decisions regarding future planning for the location of waste management facilities.

The Municipal Waste Advisory Council (MWAC) has provided a submission to the Association on issues pertaining to waste relevant to the Metropolitan Local Government Review and MWAC's submission has been provided to the Metropolitan Local Government Review Panel.

Another example relates to bush fire management. It could be argued that bush fire control has reached the point where it is often beyond the scope of Local Government. Consideration may have to be given to a total handover of responsibility for bush fires from Local Government to State Government.

⁵⁹ WALGA (2012)

In considering specific functions and the delivery of specific services the principles of ‘subsidiarity’ and ‘form follows function’ must be adhered to. These principles relate to discussions regarding current and future government and governance structures for the Perth metropolitan region.

30 What are the limitations or restrictions on local government doing more or in delivering current services more effectively or efficiently?

Critical Success Factors for effective and efficient Local Governments are addressed below commencing on page 40.

31 Bearing in mind the Panel’s terms of reference in relation to improved structures and governance models to better meet the needs of the community, are there any major changes to key legislation which are essential or desirable?

There are a number of amendments to the *Local Government Act 1995* that should be considered as a major outcome of the Metropolitan Local Government Review. Legislation and Legislative Change is addressed in this submission as a Critical Success Factor on page 44.

32 Are there opportunities to streamline local government service delivery?

Local Governments seek opportunities to streamline their service delivery functions within current legislative constraints. One example of streamlined service delivery is demonstrated by waste processing undertaken by Regional Local Governments on behalf of Local Governments. The Eastern Metropolitan Regional Council (EMRC) also undertakes regional development and tourism for its member Local Governments. Another example relates to the South West Group which undertakes economic development and explores regional service delivery opportunities on behalf of its member Local Governments.

The State Government should explore the greater use of regional bodies as a mechanism to channel funding to achieve policy objectives through program delivery at the regional level. This concept has relevance to the Governance Models section of this submission, which commences on page 55.

There are a number of opportunities to streamline Local Government service delivery further. One important method of streamlining service delivery is for Local Governments to engage in shared service delivery, which is addressed as a Critical Success Factor on page 49.

Critical Success Factors

There are a number of critical success factors for an improved system of Local Government in Perth and in Western Australia more generally.

Intergovernmental Relations

Intergovernmental relations in the context of the Metropolitan Local Government Review has a number of important facets. Firstly, a strong, high-level intergovernmental relationship between the State Government and the Local Government sector is of paramount importance. Secondly, relationships between government agencies and Local Governments on specific projects or functions are crucial for effective and efficient service delivery. Thirdly, coordination between and across all spheres of government and all government agencies is becoming increasingly important as the complexity of issues confronting society increases. Finally, it is important that a coherent and compelling vision for the Perth metropolitan region is developed and enunciated so that all stakeholders, including government, the private sector, non-profit organisations and the community, can embrace a shared future.

A strong and robust partnership between the State Government and Local Government sector is important for optimal service delivery to communities. A strong and robust partnership goes beyond a written agreement to meaningful engagement on issues of common interest for the benefit of all Western Australians. In practice a partnership of this nature means engagement before the introduction of reforms that impact Local Government.

In 2002, the Premier, the President of WALGA and the President of Local Government Managers Australia (LGMA) (WA) signed the *State/Local Government Partnership Agreement*. The Agreement's overarching principle is stated below:

*"A commitment to improving cooperation between State and Local Government to enhance sustainable social, environmental and economic development of Western Australia through consultation, communication, participation, cooperation and collaboration at both strategic and project levels."*⁶⁰

In 2004, the partnership agreement was underpinned by the development of the *Partnership Agreement on Communication and Consultation*. This agreement specified

⁶⁰ Government of Western Australia, WALGA and LGMA (2002)

that a minimum of twelve weeks' consultation with the Local Government sector should be undertaken when State Government policy or legislation is developed or reviewed.⁶¹

In August 2010 a new agreement was signed by the Premier, Minister for Local Government, President of WALGA and President of the LGMA. This current agreement, *Western Australian State Local Government Agreement*, establishes "an open and productive relationship between the State Government and the Local Government sector."⁶² The Agreement states that more specific cooperation provisions will be negotiated but a protocol guiding communication and consultation is yet to be established.

Recommendation 1

A protocol guiding communication and consultation between the State Government and the Local Government sector be developed and implemented as a matter of urgency

An intergovernmental agreement is also in place at the Federal Level. The primary purpose of *The Inter-Governmental Agreement Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters* is to:

*"Encourage the conduct of positive and productive relations between the three spheres of government in a spirit of respect with an emphasis on partnership and cooperation."*⁶³

Significantly, at the Federal level, the President of the Australian Local Government Association (ALGA) represents Local Government on the Council of Australian Governments (COAG), the peak intergovernmental forum in Australia.

While formal agreements and participation in structured forums are necessary for robust relationships between different spheres of government, such mechanisms are not sufficient. A robust, partnership approach requires understanding and commitment from all parties to ensure governance and government services to communities are optimised.

A robust, partnership is crucial at the strategic level, but is also vital in specific policy portfolios and at the project level. Waste policy is one example where greater coordination between governments – State and Local – would be beneficial for the community. In metropolitan Perth, 30 Local Governments and five Regional Local

⁶¹ Government of Western Australia, WALGA and LGMA (2004)

⁶² Government of Western Australia, WALGA and LGMA (2010)

⁶³ Australian Government (2006) p3

Governments are collectively responsible for the collection and processing of millions of tonnes of waste per year. Future planning for the provision of waste management facilities for the Perth metropolitan region will require significant cooperation between Local Governments, Regional Local Governments and numerous State Government agencies.⁶⁴

These challenges reiterate the importance of regional cooperation, collaboration across different sectors and the importance of a coherent, consistent strategic vision, highlighted recently by the Grattan Institute as key lessons for metropolitan governance in Australia.⁶⁵

This is true at strategic, policy and project levels. For the governance of metropolitan Perth to be optimised, all governments must embrace cooperation and collaboration between governments, the private and not-for-profit sectors and the community. There may be a further requirement for a deep community engagement process to be undertaken for a strategic, coherent vision for metropolitan Perth to be developed and articulated.

Local Government Commission

It is proposed that a Local Government Commission be established to provide a strategic and coordinated approach to capacity building initiatives in the Local Government sector and remove the inherent conflict as a result of the dual role of the Department of Local Government.

The Department of Local Government is currently responsible for compliance and regulation of the sector and capacity building. It is proposed that these roles be undertaken by separate bodies; a Local Government Commission should be established to undertake capacity building on behalf of the Local Government sector while the Department of Local Government maintains responsibility for compliance and regulation of the sector.

The newly established Local Government Commission would be charged with:⁶⁶

- Progressing Local Government's ability to examine and improve its sustainability
- Improving access to consistent aggregated Local Government financial information
- Encouraging standard asset management practices
- Encouraging long term strategic financial planning and management

⁶⁴ MWAC (2012)

⁶⁵ Grattan Institute (2010) and WALGA (2012) p63

⁶⁶ WALGA (2008b) p127

- Assisting with the implementation of community infrastructure planning, and
- Undertaking the majority of the advisory and sector support functions currently undertaken by the Department of Local Government.

The Commission's overarching strategy should be aimed at increasing Local Government's capacity to deal with sustainability challenges.⁶⁷

The Commission should be governed by a Board with appointments made by WALGA, the LGMA and the Minister for Local Government. Ultimately the Board would be answerable to the Minister for Local Government but should be sufficiently independent from the State Government and the Local Government sector.

The Local Government Commission would provide best practice guides and practical assistance in strategic planning, asset management and financial management. The Commission could provide comparative data on Local Government finances and could undertake independent financial assessments and asset management audits of Local Governments.

The Local Government Commission could also undertake the Local Government Advisory Board and the Western Australian Local Government Grants Commission functions on behalf of the Local Government sector.

The establishment of a Local Government Commission would reduce the potential for conflict for the Department of Local Government, which currently undertakes a compliance and regulatory function and a capacity building function simultaneously.

The Local Government Commission could be funded through current capacity building funding.

Recommendation 2

A Local Government Commission be established in Western Australia as proposed in this submission

Alternatively, in South Australia, the Local Government Association is responsible for capacity building in the sector with funding from the State Government. WALGA is well placed to undertake capacity building on behalf of the sector in Western Australia should the Local Government Commission model be rejected.

⁶⁷ WALGA (2008b) p127

Legislation & Legislative Change

The *Local Government Act 1995* was developed on the basis of ‘general competence’: that Local Governments are able to provide services and address community issues so long as the Act and other legislation are not contravened.

Since the development of the Act, subsequent amendments have gradually eroded the ‘general competence’ principle, which impacts on Local Governments’ ability to respond to the aspirations and expectations of their communities.

While the *Local Government Act 1995* serves the community and the Local Government sector reasonably well, there is room for improvement. It is recommended that a comprehensive review of the Act be undertaken with the view to addressing the negative impact of subsequent amendments and streamlining Local Government legislation under the principle of ‘general competence’.

Recommendation 3

A comprehensive review of the *Local Government Act 1995* be undertaken to restore the Act to the principle of ‘general competence’

Other proposed amendments to the Act are discussed below relating to Local Government finance and service delivery models.

Local Government Finance

The removal of constraints to Local Government revenue capacity is a critical success factor for an improved system of Local Government in Western Australia.

The place of Local Government in Australia’s Federation and in the context of the vertical fiscal imbalance has been well documented and well researched. The revenue constraints impacting on Local Government in virtue of its role in the Federation is perhaps best summarised by the Systemic Sustainability Study Panel:

“The positioning of Australian Local Government in jurisdictional roles, determined by State legislation and with revenue sourced from State and Commonwealth sources along with own-source rates and charges, provides significant scope for role and funding tensions between the three levels of government.”⁶⁸

⁶⁸ WALGA (2006) p19

This tension sometimes manifests in commentary about Local Government rate setting, which occasionally degenerates to a discussion about the merits or otherwise of specific rate increases. A debate of this nature can be destructive; rate rises above the consumer price index may be essential for a number of reasons.

Firstly, rates are Local Governments' only taxation mechanism available to fund the myriad of services expected by the community. This is because other sources of income are subject to varying degrees of control by other spheres of government: fees and charges may be set or capped by regulation and not increased over time and grants and transfers are not subject to Local Government control. Secondly, due to a large infrastructure backlog, there is a need for Local Governments to raise sufficient revenue to fund future obligations for infrastructure replacement and renewal. Failure to do this represents an inequitable transfer of liabilities to future generations of ratepayers.⁶⁹ Thirdly, since Local Government expenditure is weighted towards labour, Local Governments' costs have trended above the level of the consumer price index over a number of years.⁷⁰

Beyond acknowledging Local Government's place in Australia's Federal system of Government, characterised by a significant vertical fiscal imbalance, there are some practical reforms that would enhance the revenue capacity of Local Governments and improve equity in the community.

Rating Exemptions – Charitable Purposes

In 2005, the Local Government Advisory Board inquired into the operation of section 6.26(2)(g) of the *Local Government Act 1995*.⁷¹ This section provides that "land used exclusively for charitable purposes" is exempt from Local Government rates.

In principle, this section of the Act is supported by the Local Government sector. Clearly, Local Government, like any sphere of government, must continue to play a role in supporting and encouraging charitable organisations in their work for the benefit of the community. Accordingly, advocacy by the Local Government sector for legislative amendments relating to this section of the Act should not be misinterpreted as disregard for the positive work of charities in the community.

The Local Government sector contends that exemptions under this section of the Act have extended beyond the original intention and now provide rating exemptions for non-charitable purposes, which increase the rate burden to other ratepayers.

⁶⁹ WALGA (2011c) p9

⁷⁰ WALGA (2011e)

⁷¹ Local Government Advisory Board (2005)

The most prominent example of this is the exemption provided under this section of the Act to Independent Living Units (ILU), which is well documented in the Local Government Advisory Board's Report.⁷² It is estimated by the Local Government Advisory Board that approximately \$3 million of revenue was foregone by Local Governments in 2005 as a result of this section of the Act.⁷³ If this issue is not addressed, the rate burden on other ratepayers will continue to increase as the demand for Independent Living Units increases as the population ages.

The Local Government Advisory Board recommended in 2005 that Independent Living Units should not be exempt from rates.⁷⁴ The Legislation Reform Working Group recommended in 2010 that Independent Living Units should not be exempt from rates.⁷⁵ The Local Government sector and the Association agree.

WALGA's policy position on this issue is that the *Local Government Act 1995* should be amended to remove the rate exemption for Independent Living Units. There may be an argument for exemptions to be granted by State or Federal legislation. Examples include exemptions granted by the Commonwealth *Aged Care Act 1997* and group housing for the physically and intellectually disabled which is supported under a government scheme such as a Commonwealth-State Housing Agreement or Commonwealth-State Disability Agreement.

The sphere of government that determines that exemptions should be granted should fund the exemption. This will ensure that funding the revenue shortfall will be equitably and appropriately distributed amongst taxpayers. For example, the State Government have a compensatory fund of this nature relating to pensioner discounts for the payment of rates.

The Local Government Act 1995 needs to be amended to provide clarification on rating of land used for charitable purposes.

Recommendation 4

- a) The *Local Government Act 1995* be amended to remove the rate exemption for Independent Living Units
- b) The *Local Government Act 1995* be amended to provide clarification on rating of land used for charitable purposes

⁷² Local Government Advisory Board (2005) p14-22

⁷³ Local Government Advisory Board (2005) p3

⁷⁴ Local Government Advisory Board (2005) p22

⁷⁵ Legislation Reform Working Group (2010) p2

Rate Equivalency Payments

A similar issue relates to rate exemptions for State Government trading entities.

A particular example is the exemption granted to LandCorp by the *Land Authority Act 1992*. In 1998, the Act was amended to include provisions for LandCorp to pay the Treasurer an amount equal to that which would have otherwise been payable in Local Government rates, based on the principle of 'competitive neutrality'.

This matter is of serious concern to Local Governments with significant LandCorp holdings in their district. The shortfall in rates are effectively paid by other ratepayers, which means ratepayers have to pay increased rates because LandCorp has a presence in the district.

Recommendation 5

That LandCorp and other Government Trading Entities' rate equivalency payments be made to the relevant Local Governments instead of the State Government

The current situation involving the Perth Airport demonstrates that such a system is appropriate and can work in practice. In this case, the Commonwealth Government requires the lessee to make a rate equivalency payment to the relevant Local Government and not the Commonwealth. There is no reason why a similar system cannot be adopted for State Government Trading Entities.

Restrictions on Borrowings

Another Local Government finance issue is a disincentive for Local Government investment in community infrastructure due to borrowing restrictions in the *Local Government Act 1995*. Section 6.21(2) states that a Local Government can only use its 'general funds' as security for borrowings to upgrade community infrastructure, and is restricted from using its assets to secure its borrowings.

This provision severely restricts the borrowing capacity of Local Governments and reduces the scale of borrowing that can be undertaken to the detriment of the community.

This is particularly relevant since the Global Financial Crisis. Treasury now requires member Local Governments to show as contingent liabilities in their balance sheet their proportion of contingent liabilities of the Regional Local Government of which they are a member. Given that the cost of provision of an Alternative Waste Disposal System is

anything up to \$100 million, the share of contingent liabilities for any Local Government is significant. Even under a 'Build-Own-Operate' financing method, the unpaid (future) payments to a contractor must be recognised in the balance sheet of the Regional Local Government as a contingent liability.

This alone is likely to prevent some Local Governments from borrowing funds to finance its own work as the value of contingent liabilities are taken into account by Treasury for borrowing purposes.

Recommendation 6

That Section 6.21 of the *Local Government Act 1995* be amended to allow Local Governments to use freehold land, in addition to its general fund, as security when borrowing

Fees and Charges

Fees and charges are, on average, the second largest source of Local Government discretionary revenue.⁷⁶ Local Governments are able to charge users for specific, often incidental, services. Examples include dog registration fees, fees for building approvals and swimming pool entrance fees.

In some cases, Local Governments will recoup the entire cost of providing a service or even make a profit. In other cases, user charges may be set below cost recovery to encourage a particular activity with identified community benefit, such as sporting ground user fees or swimming pool entry fees.⁷⁷

Currently, fees and charges are determined according to three methods:

- By legislation
- With an upper limit set by legislation⁷⁸
- By the Local Government.

Fees determined by State Government legislation are of particular concern to Local Governments and represent significant revenue leakage. Examples of fees and charges of this nature include dog registrations fees, town planning fees and building permits. Since Local Governments do not have direct control over the determination of fees set by legislation, this revenue leakage is recovered from rate revenue.

⁷⁶ WALGA (2008b) p80

⁷⁷ WALGA (2008b) p81

⁷⁸ See Section 6.17(3) of the *Local Government Act 1995*

Under the principle of ‘general competence’ there is no reason why Local Governments should not be empowered to make decisions regarding the setting of fees and charges for specific services.

There may be an argument that certain fees and charges should be consistent across the State or the metropolitan area; however it is not clear why dog registration fees, as an example, should be the same in every Local Government area. Local Governments in most other states are able to set animal registration fees.⁷⁹

Car registration fees are not the same in every State and few would argue they ought to be; setting fees, charges and tax rates is a core function of government and Local Governments, as a legitimate sphere of government, should be able to make policy decisions regarding their services and revenue streams.

Councils should be empowered to make policy decisions regarding user-paid services provided by the Local Government.

Recommendation 7

That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services

Service Delivery Models

A key function of Local Government is to effectively and efficiently provide services to the community. One way for this to occur is for Local Governments to be able to enter into a shared service model to access greater economies of scale where they exist.

The Association has consistently argued for increased flexibility for Local Governments to enter into alternative service delivery arrangements. This is because:

*“Shared services with a regional and strategic focus provide a major vehicle for Local Governments to continue to provide high quality services and infrastructure for their communities in a more efficient and more effective manner”.*⁸⁰

The Association’s position on Local Government service delivery models contains three key planks, all of which require amendment to the *Local Government Act 1995*:

- Reduced compliance obligations for Regional Local Governments,
- Enable Local Governments to establish Regional Subsidiaries, and
- Enable Local Governments to establish Council Controlled Organisations (CCO).

⁷⁹ Councils set animal registration fees in Victoria, Queensland, Tasmania and South Australia.

⁸⁰ WALGA (2011d) p26

Regional Local Governments

Regional Local Governments can be established by one or more Local Governments in Western Australia and operate under an establishment agreement. In the metropolitan area, Regional Local Governments are typically established to provide waste services for their constituent Local Governments.

Regional Local Governments are treated as if they are a *Local Government* for the purpose of regulation and compliance. Consequently, most of the compliance and accountability requirements that apply to Local Governments also apply to Regional Local Governments.⁸¹

As WALGA stated in its recent submission to the Legislation Committee of the Legislative Council:

“This can become a significant disincentive for Local Governments to establish Regional Local Governments because any potential benefits from efficiency gains must significantly outweigh the costs associated with the Regional Local Government’s compliance obligations.”⁸²

The *Local Government Act 1995* contains provisions for regulations to be implemented that modify or exempt Regional Local Governments from particular provisions of the Act; however, this power has only been used to a limited extent.⁸³

A significant opportunity exists to streamline Local Government service delivery functions via a review of the regulatory and compliance burden of Regional Local Governments.⁸⁴

Recommendation 8

A review, with the involvement of the Association and the Local Government sector, examining the regulatory and compliance burden of Regional Local Governments be undertaken.⁸⁵

A review of this nature has the potential to make the establishment of Regional Local Governments a much more attractive proposition for Local Governments seeking to enter into shared service arrangements.⁸⁶

⁸¹ Douglas (2009) p19

⁸² WALGA (2011d) p9

⁸³ Douglas (2009) p43

⁸⁴ WALGA (2011d) p22-23

⁸⁵ WALGA (2011d) p23

⁸⁶ WALGA (2011d) p23

Regional Subsidiaries

In November 2010, the *Local Government Amendment (Regional Subsidiaries) Bill 2010* was introduced into the Legislative Council. The intent of the Bill is to enable two or more Local Governments to establish a regional subsidiary to perform a variety of Local Government functions. The model is currently utilised by South Australian Local Governments.

The Bill was subsequently referred to the Legislation Committee of the Legislative Council. WALGA made a comprehensive submission to the Committee and appeared at a Committee Hearing.⁸⁷

The regional subsidiary model has the potential to provide improved service delivery to communities on behalf of the constituent Local Governments. There are three key benefits of the regional subsidiary model: the model is flexible, as it is principally governed by a charter, the model's governance structure enables the appointment of independent expertise and the model provides greater accountability than the traditional Local Government service delivery model.⁸⁸

Recommendation 9

That the *Local Government Act 1995* and Regulations be amended to enable Local Governments to establish regional subsidiaries as intended by the *Local Government Amendment (Regional Subsidiaries) Bill 2010*

Council Controlled Organisations

The third key plank of the Association's position on shared services is for Local Governments to be enabled to establish Council Controlled Organisations (CCOs). This model is available to Local Governments in New Zealand where they are used for a variety of purposes. The model allows one or more Local Governments to establish a wholly Local Government owned commercial organisation.

In New Zealand, CCOs are employed:

“to carry out a broad range of functions where (in the opinion of the shareholding local authorities) the efficiency of delivering such functions would be enhanced by the creation of professionally governed entities established for the specific

⁸⁷ WALGA (2011d)

⁸⁸ WALGA (2011d) p26

*purpose and where the appropriate consultation and oversight measures are in place.*⁸⁹

One key example of a function that could be undertaken by a Council Controlled Organisation is urban regeneration on a small, localised scale where low financial returns might be justified in pursuit of broader social objectives.⁹⁰

There are a number of benefits of the CCO model. Firstly, the CCO governance structure is flexible and will primarily consist of independent directors with experience relevant to the organisation's purpose and undertakings. Secondly, while the broad purpose and objectives will be set at the Council level, the CCO model removes commercial decisions from the political realm which can lead to improved decision making. Risk can also be reduced by the CCO model by quarantining ratepayers from legal liability and financial risk arising from commercial decisions.⁹¹ Another benefit is the increased oversight that a CCO provides relative to the traditional Local Government approach. The board of the CCO will provide greater oversight to the organisation's undertakings than if the function were being undertaken by a business unit inside the Local Government with a hierarchical oversight chain through the Chief Executive Officer to the Council.⁹²

The Association has developed the amendments required for the CCO model to be implemented in Western Australia and the full legislative amendments are included as an appendix to this submission.⁹³

Recommendation 10

That the *Local Government Act 1995* and Regulations be amended to enable Local Governments to establish Council Controlled Organisations

Adoption of the CCO model would allow Local Governments the flexibility to pursue commercial objectives, currently passed up by the private sector, with appropriate accountability and transparency to ensure beneficial outcomes for the community.

Local Government Legitimacy

A guiding principle of the Association is that Local Government is a legitimate and important sphere of government in Australia's Federation.

⁸⁹ WALGA (2010) p5

⁹⁰ WALGA (2010)

⁹¹ WALGA (2010) p8

⁹² WALGA (2011d) p24-25

⁹³ See Appendix 1 and also WALGA (2011d) p32-41 or WALGA (2010) p29-38

Democratic Role of Councils

Councils consist of democratically elected representatives in local communities. Elected Members represent the community, provide leadership and guidance and facilitate communication between the community and the Council.⁹⁴

Elected Members are also stewards of large and complex organisations and are ultimately responsible for multi-million dollar decisions. This has led to comparisons between Councils and Boards.

This is inappropriate: Councils are not Boards. This comparison neglects the very important democratic and community representation role undertaken by Elected Members. This comparison also diminishes Local Government as a legitimate sphere of *government* and should be rejected.

There are significant differences between Councils and Boards but there are also similarities. It is appropriate for good governance principles and practices to be implemented by Councils. Elected Members should be encouraged to develop their capacity to make sound, strategic decisions based on professional advice. 'Board-like behaviour' from Elected Members in terms of strategic decision making should be encouraged and facilitated.

Professional and strategic decision-making is crucial to good governance, but in striving for this goal, the very important democratic role of Elected Members in communities should not be forgotten or diminished.

Consistency with Other Spheres of Government

There is an argument that the legitimacy of Local Government could be enhanced if there was greater consistency between Local Governments and other spheres of government in Australia's Federation.⁹⁵

The Metropolitan Local Government Review Panel's Issues Paper asks whether voting should be compulsory in Local Government elections.⁹⁶ As this submission argued on page 29, compulsory voting is one aspect of the electoral system and should not be considered in isolation. Other aspects of the electoral system include the method of election, the system of voting and terms of elected representatives.

⁹⁴ Local Government Act 1995

⁹⁵ WALGA (2008c) p9

⁹⁶ Metropolitan Local Government Review Panel (2011) p12

Increased similarity with State and Federal Government, in terms of the electoral system, may improve the standing of Local Government as a legitimate sphere of government in Australia's democratic system in the eyes of the community and State and Federal politicians.

The Metropolitan Local Government Review process may be the catalyst for the Local Government sector to engage in a mature and frank conversation about its role in Australia's Federation and the electoral arrangements that underpin democracy at the local level.

It is for increased legitimacy, that Australian Local Governments overwhelmingly support the inclusion of Local Government in the Australian Constitution.⁹⁷

⁹⁷ ALGA (2011)

Governance Models

The Association engaged Conway Davy and Planning Context (a division of TPG Town Planning and Urban Design) to identify and analyse alternative models for metropolitan Perth's Local Government governance structures.

Conway Davy and Planning Context prepared a detailed report on four alternative models and the full report, *Metropolitan Local Government Review: Development and Analysis of Alternative Models*, is publically available and is included as an addendum to this submission to the Metropolitan Local Government Review Panel.

Representatives from all metropolitan Local Governments were invited to attend a Governance Models Forum held by the Association on Monday, 16 January 2012. The purpose of the Forum was to develop clear guidance on the preferred model or models for Local Government in metropolitan Perth in to the future, as input into this submission.

Four alternative models were developed and are summarised as follows:

- Model 1** Approximately 20 Local Governments and a Metropolitan Regional Council (MRC)
- Model 2** Between 10 and 15 Local Governments developed around 'Activity Centres' and a Metropolitan Regional Council (MRC)
- Model 3** Six cities broadly corresponding to the existing sub-regional areas of the Metropolitan Region
- Model 4** A single 'Super City' model comprising the whole of the Perth metropolitan area with a subsidiary network of local community boards

Prior to the Forum, participants were provided a summary of the four models which included an analysis of projected future population distribution in metropolitan Perth, consideration of advantages and disadvantages of each model and an assessment of powers and functions appropriate to be undertaken by Local Government under each model.

Approximately 70 Local Government Elected Members and senior officers from nearly all of the 30 metropolitan Local Governments attended the 16 January Forum, which was independently facilitated.

At the Forum, the advantages and disadvantages of each of the four models were analysed in detail. The Forum was then empowered to select a preferred model or models to be progressed in this submission. The Forum also had the opportunity to identify modifications to the presented models.

Governance Models Forum Outcomes

Model 4 – the ‘Super City’ model – was overwhelmingly rejected by the forum, following group work and a plenary session, as a model no longer harnessing the strengths of Local Government as able to respond to the expectations and aspirations of *local* communities. Furthermore, as a Local Government for the entire metropolitan region would govern for 75 percent of the State’s population, adoption of this model would overlap with State Government functions and could lead to significant conflict.

After voting on the remaining three models, model 3 – six Local Governments based on metropolitan sub-regions – was not favoured by the forum. The main reason for not pursuing this model relates to loss of local representation and influence.

The Forum indicated a strong preference for Model 1 – approximately 20 Local Governments and an MRC – and Model 2 – 10 to 15 Local Governments based around Activity Centres and an MRC.

Summaries of the two preferred models are included below. Following the summaries, the modifications to the models identified by the Forum are listed. Finally, a preferred model, which synthesises the original proposal with modifications stemming from the Forum, is presented as a recommendation.

Model 1 – Approximately 20 Local Governments & MRC⁹⁸

This summary was prepared by Conway Davy and Planning Context to inform participants prior to the Governance Models Forum. The full report has been provided to the Panel as an addendum to this submission.

This model initially envisages approximately 20 municipalities created through an amalgamation program. The initial focus of an ongoing boundary review program would involve the amalgamation of smaller councils through consideration of geographical connections and communities of interest.

⁹⁸ Conway Davy and Planning Context (2012)

This model would also involve the creation of a strong Metropolitan Regional Council (MRC) through legislative changes to the *Local Government Act 1995* and related Acts including the *Planning and Development Act 2005*. It would focus on strategic planning and decision making at a regional level. The key objective of the model would be to achieve greater capacity for Local Governments to better plan, manage and deliver services at the local and regional scale with a focus on social, environmental and economic sustainability.

Advantages

The establishment of a MRC would provide for regional decision making while still preserving local autonomy, diversity, and the distinct identity of Councils. It accepts that reform is needed and sees this best undertaken from the ground-up basis resulting in a smaller number of Councils with a greater capacity to better plan, manage and deliver services.

The establishment of the MRC would:

- Foster regional decision making and strategic capacity building in Local Government.
- Enable the development and implementation of an integrated vision and strategy for the region in cooperation with the State government.
- Create a policy environment in which a metropolitan-wide focus can occur in areas such as economic development, tourism, environmental quality, social and spatial disparities, equitable funding of services, and quality of public services throughout the region.
- Create an organisation of a scale that can interact with State Government on a more equal basis.
- Promote the emergence of stable and regionally coherent policy making processes responsive to, and representative of, local needs.
- Create opportunities for regional service delivery for Local Government in a range of areas.

Disadvantages

The disadvantages of the MRC model are that:

- It requires legislative changes to provide the MRC with strong regional powers.
- It involves setting up a new structure although it could be developed off one of the existing regional councils.
- There are concerns about the added costs (particularly where the regional council is not involved in self-generating revenue sources such as waste management).

- It may not be acceptable to or be allowed to truly partner with the State Government, and may do little to result in fundamental changes in current State attitudes to Local Government autonomy.

Model 2 – 10 to 15 Local Governments Based on Activity Centres & MRC⁹⁹

This summary was prepared by Conway Davy and Planning Context to inform participants prior to the Governance Models Forum. The full report has been provided to the Panel as an addendum to this submission.

This model involves reshaping of existing Local Government structures around designated activity centres, both existing and emerging. This will involve the aggregation of smaller Local Governments, with the intention to have a minimum population of around 100,000 (with exceptions including the City of Perth or areas with geographic constraints or facing intense future growth).

As with Model 1 this approach would also involve the creation of a Metropolitan Regional Council (MRC) to focus on mechanisms for collaborative planning and decision making at a regional level. The key objective of the model would be to achieve greater capacity for Local Governments to better plan, manage and deliver services at the local and regional scale with a focus on social, environmental and economic sustainability.

Advantages

As with Model 1 the establishment of a MRC has the major feature of providing for regional cooperation while still preserving local autonomy, diversity, and distinct identity.

The amalgamation of some smaller Councils into those of around 100,000 people are expected to result in some cost saving and having a focus on activity centres assisting Local Governments to develop a broader set of land uses and a diversified rate base.

The scale of Local Governments is such that they should still be able to be in touch with their local communities without the need for community boards.

The other main advantage of this model is that it aligns State and Local Government policy in relation to a focus on growth in activity centres defined in *Directions 2031*. It is argued that Local Governments ideally need to be located in activity centres so they can support their development.

⁹⁹ Conway Davy and Planning Context (2012)

The desired effect is a cycle of public and private investment, to sustain centres of economic growth and to distribute the benefits through employment and value-added multipliers that pollinate jobs and increase aggregate demand within the centre boundary.

Disadvantages

The disadvantages of the MRC approach are identified under Model 1 and its creation may also do little to result in fundamental changes in current State attitudes to Local Government autonomy. Many attempts have been made over recent years to come up with amalgamation models to rationalise the number of Local Governments, including an unendorsed proposal by the LGMA in 2007 for 17 roughly equal Local Government areas.

Any such model inevitably breaks down once longer-term growth is taken into account. If the starting point for the reform is that 30 Local Governments for Perth is too many then an average population size per unit of around 100,000 – 120,000 cannot be sustained because by the time the population reaches 3 million either there would be a proliferation of Local Governments to near current numbers or the average unit population would no longer be near the target level. Uneven growth would also create the need for more frequent further adjustments in future.

Modifications to the Preferred Models

Of the four models presented, participants at the Forum were in favour of Models 1 and 2. These models retain the current functions of Local Government: building and managing communities and responding to the expectations and aspirations of local communities.

Participants at the Forum proposed a number of modifications to the original Models.

Modifications to Model 1

Proposed modifications to Model 1 – Approximately 20 Local Governments and an MRC:

- An appropriate framework be created to determine the number of Councils in metropolitan Perth using pre-determined criteria underpinned by the following sustainability principles:
 - Economic sustainability
 - Social sustainability
 - Environmental sustainability, and

- Organisational sustainability.
- Not pursue the Metropolitan Regional Council model but instead have five Regional Councils dealing with waste, regional planning, economic development and natural resource management (NRM) underpinned by statutory powers.

Another suggestion relating to this model is the establishment of a robust partnership between the State Government and Local Government to eliminate inefficiencies in service delivery. This issue is discussed in detail as a Critical Success Factor for reform on page 40.

Modifications to Model 2

Proposed modifications to Model 2 – 10-15 Local Governments developed around Activity Centres and an MRC:

- Local Governments based on a hierarchy of the Activity Centre Policy with identified Strategic Metropolitan Centres and some secondary centres.
- Local Governments based on *Directions 2031* with communities of interest without set numbers using definitive boundaries and with emerging centres included in the future.
- Not pursue a Metropolitan Regional Council model but rather expand existing powers of Regional Council to incorporate tasks such as strategic planning, transport and other regional functions.

There were other suggestions pertaining to this model including the removal of rate exemptions for State Government Trading Entities, which is addressed on page 47, and that costs relating to State Government imposed reform should be borne by the State Government, which is addressed on page 63.

Finally, it was suggested that an “Alliance of Mayors” be established as an alternative to the MRC, to enhance strategic cooperation and collaboration between Local Governments in the metropolitan region. It would be appropriate for a body of this nature to be established and administered by the Association.

Preferred Governance Model

From the four models presented, the Association’s preferred governance model for Local Government in metropolitan Perth, based on the original models and incorporating proposed modifications is presented below. The preferred model incorporates two key components: the determination of Local Government boundaries based on appropriate criteria and improved mechanisms for regional cooperation and coordination.

A synthesis of Models 1 and 2 would suggest that the metropolitan region should be governed by a lesser number of Local Governments than currently exists (approximately 15 to 20 Local Governments) determined using appropriate criteria. These criteria would include reference to activity centres (present and future) from *Directions 2031*, and the following sustainability principles:

- Economic sustainability
- Social sustainability
- Environmental sustainability, and
- Organisational sustainability.

The preferred model would see approximately four or five regional bodies in metropolitan Perth undertaking regional service delivery functions including waste, economic development and natural resource management. The regional bodies could also undertake spatial, transport, infrastructure and environmental planning for their region.

The newly established regional bodies may broadly correspond to metropolitan sub-regional areas identified in *Directions 2031*.

The establishment of four or five regional bodies was favoured over the originally proposed Metropolitan Regional Council (MRC). This was mainly due to uncertainties regarding the role of the proposed MRC, its representative arrangements and other practical considerations. Further work would be required regarding statutory functions and representational arrangements for a Metropolitan Regional Council to be considered.

Recommendation 11

That a Governance Model based on the following guiding principles be adopted for the Perth metropolitan region:

- Determination of Local Government boundaries based on sustainability principles (economic, social, environmental and organisational) with reference to *Directions 2031*. The existence of strategic industrial areas and other major land uses should also be considered
- Establishment of regional bodies to undertake regional service delivery and regional strategic planning, and
- Enhancement of Intergovernmental Relations between State Government and the Local Government sector at the strategic, policy and project levels.

Transition Process

The implementation of the Panel's recommendations is a very important aspect of the Metropolitan Local Government Review. It is crucial that there is continued engagement with the Association, the Local Government sector and the community throughout the implementation phase.

A number of principles require consideration regarding the process through which change occurs. For example, the principle of 'local democracy', that Local Governments are governed by a democratically elected Council, must be balanced with the need for the newly amalgamated organisation to have a stable and fresh beginning by transitioning through commissioners. The newly established Local Government should not return to democracy at the expense of stability, but nor should commissioners become entrenched in the organisation for an extended period.

There are also practical considerations associated with structural reform. The Department of Local Government's *Local Government Amalgamation Guide 2010* provides a detailed guide for Local Governments implementing an amalgamation.¹⁰⁰ There are many issues that amalgamating Local Governments need to address including integrating systems, workforces, finances and contracts. Clearly, change processes of this scale and complexity require significant resources and will take significant time.

In the event of large-scale structural change, there will also be consequential impacts on other organisations including Regional Local Governments. For example, the seven member Councils of the Mindarie Regional Council are guarantors of a \$90 million loan over a 20 year timeframe which funded the development of the Neerabup Resource Recovery Facility.¹⁰¹ Medium and long term contractual obligations of Local Governments must be a serious consideration in determining the form and shape of the Local Government sector in metropolitan Perth.

It is also incumbent on the Panel to give consideration to the impacts of their recommendations on Local Governments, communities and individuals. This is particularly important in the time between the Panel's report and the Government's decisions regarding the Panel's recommendations; there is likely to be a period of great uncertainty in the Local Government sector.

Recommendation 12

That the Metropolitan Local Government Review Panel develops a transition plan as part of their final representations to the Minister

¹⁰⁰ Department of Local Government (2010b)

¹⁰¹ Bonker, J., Mindarie Regional Council (2011) (personal communication, 23 December)

Period of Uncertainty

The scenario, as understood by the Association, is that the Panel is due to report to the Minister for Local Government in June 2012. It is contended that it is unlikely that the Panel's recommendations will be implemented prior to the 2013 State election, which means there will be a considerable period of uncertainty between the release of the Panel's report and implementation of the recommendations.

This period of uncertainty is a major concern of WALGA and the Local Government sector and should be a consideration of the Panel prior to the release of their recommendations. More importantly, this period should be a major consideration in the State Government's response to the Panel's recommendations.

During this time there will be an impact on staff, who may believe that their job is unlikely to exist into the future. This will certainly have an impact on some Local Governments' ability to retain and attract staff, particularly Local Governments named in recommendations.

The Local Government sector more broadly may also be affected. Attracting and retaining skilled professionals is currently difficult for the Local Government sector given the current strength of the Western Australian economy. With the uncertainty of tenure of employment facing the future of the sector, potential employees may find the sector unattractive and the difficulty in attracting skilled staff may be amplified as a result of the looming structural change.

There may also be impacts on the finances of Local Governments if there is a move to ensure that the reserves of a Local Government earmarked for amalgamation are expended earlier than otherwise intended.

Recommendation 13

That the Metropolitan Local Government Review Panel ensures the State Government is made aware of the potential impacts of their recommendations on the workforces and financial positions of Local Governments

Reform Funding

Another key issue for the Panel to consider is the funding of any reform processes or amalgamations of Local Governments. The Association contends that State Government reform or State Government imposed amalgamations should be entirely State Government funded.

To this end, the Association, in its Budget Submission to the State Government, requested a \$100 million allocation for structural reform funding.

Recommendation 14

That any change to the Structure and Governance of Local Governments, whether forced or voluntary, be funded by the State Government

It must be acknowledged that structural reform requires significant resources to plan and then implement. If structural reform is recommended on efficiency or cost-saving grounds, it is likely to take several years for cost-savings to be realised. For this reason, if structural change is not State Government funded, costs to local communities are likely to increase for several years before costs are reduced.

In its 2006 Report, the Local Government Advisory Board identified the need for significant State Government investment in Local Government reform.¹⁰² More specifically, the Board suggested that funds would need to be available for Local Governments for three key stages:¹⁰³

1. Feasibility analysis
2. Facilitation and development, and
3. Implementation.

This approach is supported. It is important to recognise that significant change takes time and requires unwavering commitment from all parties.

Staffing Issues

It is important for the Panel to be cognisant of the impact on staff that significant structural change may have.

Beyond the impact on Local Governments in terms of attracting and retaining staff during transition and organisational morale during this phase, there will also be significant impacts on individual employees.

Support services for employees may be required, which could extend to counselling, depending on the nature of the proposed reforms.

There may also be impacts beyond directly affected Local Governments, to the Local Government sector more broadly, to Regional Local Governments and to contractors.¹⁰⁴

¹⁰² Local Government Advisory Board (2006) p112

¹⁰³ Local Government Advisory Board (2006) p112

¹⁰⁴ Municipal Waste Advisory Council (2012)

Transition Oversight

If a Local Government Commission is established as proposed in this submission, one of its first major roles could be oversight of the implementation of any reforms stemming from this process.

Another option would be to establish a high-level implementation oversight committee. Such a committee should include broad Local Government sector representation.

The oversight committee should report on the evaluation of the reforms including social, environmental and economic efficiencies.

It is crucial that the Local Government sector and Local Government peak bodies – WALGA and LGMA – are involved in the oversight of any significant Local Government reform initiatives. This includes any outcomes from the Metropolitan Local Government Review.

Recommendation 15

That the Local Government sector and Local Government peak bodies – WALGA and the LGMA – are involved in any Local Government reform initiative stemming from the Metropolitan Local Government Review

At the local level, if structural change is envisaged, implementation committees should be established with Councillor representation from affected Local Governments. Local implementation committees must also be provided with resources to undertake a thorough process in the lead-up to structural reform.

Following the preparation stage, in the event of structural reform, there should be a clean break to commissioners to allow the new organisation to be established. Once the new organisation is stable, fresh elections will restore local democracy to the community. Local democracy should be restored as soon as possible, but not at the expense of organisational stability for the new entity.

Metropolitan Local Government Review Panel Process

The Local Government sector, as the key stakeholder in the Metropolitan Local Government Review process, recommends that the Metropolitan Local Government Review Panel substantiates its findings to the Minister for Local Government and the Local Government sector. It is particularly important that the Local Government sector understands the rationale behind the Panel's findings to enable a detailed and considered response to be developed.

Recommendation 16

That the Metropolitan Local Government Review Panel, when releasing their draft findings for public comment, provide substantiating commentary

Further, the Local Government sector recommends that the Metropolitan Local Government Review Panel's final report is made public.

Recommendation 17

That the Metropolitan Local Government Review Panel's final report be made public

Conclusion

Local Government is a legitimate and very important component of the Australian Federation and provides local democratic representation and services to communities all over Western Australia. The underlying strength of Local Government lies in its ability to build and sustain local communities. Structural reform that removes the 'local' from Local Government will not be supported under any circumstances.

The Metropolitan Local Government Review is fundamentally about the governance of metropolitan Perth. Governance of metropolitan regions is complex and so too are the problems that cities will face in the twenty-first century. While all governance models have advantages and disadvantages, each model has to suit its unique circumstances. The challenge for the Metropolitan Local Government Review Panel is to develop a *Perth Model* of metropolitan governance. Such a model must balance local democratic representation and community engagement with coordinated regional planning and service delivery.

The Association has developed a preferred model of Local Government governance for metropolitan Perth based on two key principles. Firstly, determination of Local Government boundaries should be based on sustainability criteria with reference to *Directions 2031*. Secondly, regional bodies should be established to undertake broader regional service delivery and regional strategic planning.

Enhanced regional cooperation and collaboration within and between governments, and with the private and non-profit sectors, should be a priority of reforms stemming from this Review. Improved intergovernmental relations at the strategic and project levels will also lead to improved governance and government service delivery for the Perth metropolitan region.

A Local Government Commission should be established to focus on building Local Government capacity to ensure that service delivery is optimised and community expectations are continually met and surpassed.

A thorough review of the *Local Government Act 1995* should be undertaken to restore the principal of 'general competence' to Local Government's establishing and guiding legislation.

Constraints to Local Government revenue should be addressed to ensure equity is restored to the rating system and Councils should be empowered to set fees and charges for the services their Local Government provides.

Increased flexibility for Local Governments to efficiently and effectively deliver services to the community should be a key priority of the Metropolitan Local Government Review Panel. The compliance burden of Regional Councils should be reviewed and reduced. Local Governments should be empowered to establish Regional Subsidiaries and Council Controlled Organisations, provided appropriate community consultation is undertaken and sufficient accountability mechanisms are established.

The transition and implementation processes are crucial aspects of the Metropolitan Local Government Review and must form a key component of the Panel's recommendations. It is likely there will be a considerable period of uncertainty following the release of the Panel's recommendations and it is incumbent on the Panel and the State Government to take this into consideration. The State Government should fund State Government imposed structural reform and impacts on staff should be a key consideration. The Local Government sector and Local Government peak bodies should be involved in the oversight of any significant Local Government reform including outcomes from the Metropolitan Local Government Review process.

The sector is committed to shaping its own destiny in the interests of the communities Local Governments all over Western Australia serve and represent.

Recommendations

Recommendation 1

A protocol guiding communication and consultation between the State Government and the Local Government sector be developed and implemented as a matter of urgency

Recommendation 2

A Local Government Commission be established in Western Australia as proposed in this submission

Recommendation 3

A comprehensive review of the *Local Government Act 1995* be undertaken to restore the Act to the principle of ‘general competence’

Recommendation 4

- a) The *Local Government Act 1995* be amended to remove the rate exemption for Independent Living Units
- b) The *Local Government Act 1995* be amended to provide clarification on rating of land used for charitable purposes

Recommendation 5

That LandCorp and other Government Trading Entities’ rate equivalency payments be made to the relevant Local Governments instead of the State Government

Recommendation 6

That Section 6.21 of the *Local Government Act 1995* be amended to allow Local Governments to use freehold land, in addition to its general fund, as security when borrowing

Recommendation 7

That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services

Recommendation 8

A review, with the involvement of the Association and the Local Government sector, examining the regulatory and compliance burden of Regional Local Governments be undertaken.

Recommendation 9

That the *Local Government Act 1995* and Regulations be amended to enable Local Governments to establish regional subsidiaries as intended by the *Local Government Amendment (Regional Subsidiaries) Bill 2010*

Recommendation 10

That the *Local Government Act 1995* and Regulations be amended to enable Local Governments to establish Council Controlled Organisations¹⁰⁵

Recommendation 11

That a Governance Model based on the following guiding principles be adopted for the Perth metropolitan region:

- Determination of Local Government boundaries based on sustainability principles (economic, social, environmental and organisational) with reference to *Directions 2031*. The existence of strategic industrial areas and other major land uses should also be considered
- Establishment of regional bodies to undertake regional service delivery and regional strategic planning, and
- Enhancement of Intergovernmental Relations between State Government and the Local Government sector at the strategic, policy and project levels.

Recommendation 12

That the Metropolitan Local Government Review Panel develops a transition plan as part of their final representations to the Minister for Local Government

Recommendation 13

That the Metropolitan Local Government Review Panel ensures the State Government is made aware of the potential impacts of their recommendations on the workforces and financial positions of Local Governments

Recommendation 14

That any change to the Structure and Governance of Local Governments, whether forced or voluntary, be funded by the State Government

Recommendation 15

That the Local Government sector and Local Government peak bodies – WALGA and the LGMA – are involved in any Local Government reform initiative stemming from the Metropolitan Local Government Review

Recommendation 16

That the Metropolitan Local Government Review Panel, when releasing their draft findings for public comment, provide substantiating commentary

Recommendation 17

That the Metropolitan Local Government Review Panel's final report be made public

¹⁰⁵ Proposed legislative provisions detailed in appendix 1

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Appendix 1 – Proposed Legislative Provisions: Council Controlled Organisations

3.60 Establishment of a Council Controlled Organisation (*Replaces existing section 3.60*)

- (1) In this Act, “Council Controlled Organisation” means:
 - (a) a company established under general corporations law in which one or more local governments hold 50% or more of the equity; or
 - (b) a trust established primarily for the benefit of residents or ratepayers of one or more local government areas with the intention of holding assets formerly owned by those local governments
- (2) A local government may not form, or participate in forming, or exercise control of a Council Controlled Organisation other than:
 - (a) with the approval of the Minister; and
 - (b) in accordance with this clause and the Regulations.
- (3) A Council Controlled Organisation may not be established for the purposes of dealing with any regulatory function of a local government, and a local government may not delegate any regulatory function to a Council Controlled Organisation.
- (4) A local government may not subscribe for shares in a Council Controlled Organisation or propose to transfer assets to a Council Controlled Organisation unless it first:
 - (a) carries out a consultative process as set out in section 3.60A; and
 - (b) obtains the approval of the Minister; and
 - (c) thereafter decides* to participate in the Council Controlled Organisation.

* *Absolute majority required*

3.60A Consultation in relation to participation in a Council Controlled Organisation

- (1) A local government may not participate in a Council Controlled Organisation unless it first:
 - (a) prepares a Constitution, Statement of Intent and Business Plan for the proposed Council Controlled Organisation; and
 - (b) prepares a statement of the reasons why it believes its participation in a Council Controlled Organisation will result in an improved delivery of the functions proposed to be undertaken by the Council Controlled Organisation including, where reasonable and appropriate to do so, a comparison of the anticipated financial outcomes (***statement of reasons***); and
 - (c) gives local public notice in accordance with subsection (2); and
 - (d) makes available for public inspection copies of the proposed Constitution, Statement of Intent, Business Plan and statement of reasons at the local government offices and at each local government library in the district.
- (2) The local public notice is to contain -

- (a) notification that the local government proposes to participate in a Council Controlled Organisation; and
 - (b) details of where and when the Constitution, Statement of Intent, Business Plan and statement of reasons for the proposed Council Controlled Organisation may be inspected; and
 - (c) an invitation for submissions in relation to the proposed participation in the Council Controlled Organisation to be made by members of the public within 42 days of the day on which local public notice was first given.
- (3) The Statement of Intent prepared under this section must comply with the requirements for a Statement of Intent under subsection 3.60E.
 - (4) The Business Plan prepared under this section must contain such information as is specified in the Regulations.
 - (5) The consultation required by this section may be undertaken as part of the local government's consultation in relation to the plan prepared pursuant to section 5.56
 - (6) The local government must consider any submissions received in relation to the proposed participation in the Council Controlled Organisation before deciding whether to proceed with the proposed participation.
 - (7) Consultation carried out in accordance with this section shall be deemed to satisfy the requirements of section 3.58 in relation to the transfer of any property asset from a local government to a Council Controlled Organisation.
 - (8) Consultation carried out in accordance with this section shall be deemed to satisfy the requirements of section 3.59 in relation to the transfer of any property asset that would constitute a major land transaction, and in relation to the participation of the local government in a Council Controlled Organisation being a major trading undertaking.
 - (9) Where a local government intends to participate in a Council Controlled Organisation already in existence, the current Constitution, Statement of Intent and Business Plan of that Council Controlled Organisation shall be published in compliance with this section.
 - (10) Where a local government intends to subscribe for shares in a company already in existence and which but for the actions of the local government would not be a Council Controlled Organisation, but would become a Council Controlled Organisation solely by virtue of those actions, then the Minister may grant an exemption from any or all of the provisions of this section or substitute alternative provisions.

3.60B Minister to approve

- (1) After undertaking consultation in accordance with section 3.60A, a local government must, before it decides to participate in a Council Controlled Organisation, make a submission to the Minister setting out -
 - (a) details of the Council Controlled Organisation including its Constitution, Statement of Intent and Business Plan; and
 - (b) the nature of the local government's proposed participation in the Council Controlled Organisation; and

- (c) the statement of reasons prepared in accordance with section 3.60A(b); and
 - (d) details of the consultation undertaken by the local government and of any submissions received.
- (2) The Minister may, after considering the submission of a local government under subsection (1):
- (a) approve the local government’s participation in the Council Controlled Organisation; or
 - (b) decline to approve the local government’s participation in the Council Controlled Organisation; or
 - (c) direct that amendments be made to the Constitution, Statement of Intent or Business Plan of the Council Controlled Organisation as a condition of approval for the local government’s participation in the Council Controlled Organisation.
- (3) Where the Minister gives a direction under subsection (2), the Minister may also direct the local government to undertake fresh consultation in relation to the amended documents and to submit a further request for approval in accordance with this section.

3.60C Appointment of directors or trustees to a Council Controlled Organisation

- (1) Every local government, before considering participation in a Council Controlled Organisation, must adopt a policy that sets out an objective and transparent process for –
- (a) the identification and consideration of the skills, knowledge, and experience required of directors or trustees of a Council Controlled Organisation; and
 - (b) the appointment of directors or trustees to a Council Controlled Organisation; and
 - (c) the remuneration of directors or trustees of a Council Controlled Organisation.
- (2) A local government may appoint a person to be a director or trustee of a Council Controlled Organisation only if the person has, in the opinion of the local government, the skills, knowledge, or experience to -
- (a) guide the Council Controlled Organisation, given the nature and scope of its activities; and
 - (b) contribute to the achievement of the objectives of the Council Controlled Organisation.
- (3) A person may not be appointed by a local government to be a director or trustee of a Council Controlled Organisation by reason solely of the person’s status as an elected member of the council of the local government

3.60D Governance of a Council Controlled Organisation

- (1) The principal objective of a Council Controlled Organisation is to -
- (a) achieve the objectives, both commercial and non-commercial, of its shareholders as specified in the Statement of Intent; and

- (b) be a good employer; and
 - (c) exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when reasonably able to do so; and
 - (d) conduct its affairs in accordance with sound business practice
- (2) All decisions relating to the operation of a Council Controlled Organisation must be made by, or under the authority of, the board of the Council Controlled Organisation in accordance with -
- (a) its Statement of Intent; and
 - (b) its Constitution

3.60E Limitation on guarantees and lending

- (1) A local government must not give any guarantee, indemnity, or security in respect of the performance of any obligation by Council Controlled Organisation.
- (2) A local government must not lend money, or provide any other financial accommodation, to a Council Controlled Organisation on terms and conditions that are more favourable to the Council Controlled Organisation than those that would apply if the local government were (without charging any rate or rate revenue as security) borrowing the money or obtaining the financial accommodation.

3.60F Statements of Intent for Council Controlled Organisations

Every Council Controlled Organisation must have a Statement of Intent that is in a form prescribed by the Regulations and is not inconsistent with the constitution of that Council Controlled Organisation.

3.60G Performance monitoring and reporting

- (1) A local government that is a shareholder in a Council Controlled Organisation must regularly undertake performance monitoring of that Council Controlled Organisation to evaluate its contribution to the achievement of -
- (a) the local government's objectives for the Council Controlled Organisation; and
 - (b) the desired results, as set out in the Statement of Intent; and
 - (c) the overall aims and outcomes of the local government
- (2) A local government must, as soon as practicable after a Statement of Intent of a Council Controlled Organisation is delivered to it,
- (a) agree to the Statement of Intent; or
 - (b) if it does not agree, take all practicable steps as provided for in the Regulations to require the Statement of Intent to be modified
- (3) Within 2 months after the end of the first half of each financial year, the board of a Council Controlled Organisation must deliver to the shareholders a report on the operations of the Council Controlled Organisation during that half year,

setting out the information required by its Statement of Intent to be included in that report.

- (4) Within 3 months after the end of each financial year, the board of a Council Controlled Organisation must deliver to the shareholders, and make available to the public, a report on the operations of the Council Controlled Organisation during that year, setting out all of the information required to be included by -
 - (a) its Statement of Intent; and
 - (b) the Regulations.
- (5) Where two or more local governments together own 50% or more of the shares in a Council Controlled Organisation, the obligations of those local governments under this section may be delegated to a joint committee comprised of representatives of each participating local government and established for that purpose.

3.60H Audited accounts to be submitted to the Auditor General

The audited accounts of a Council Controlled Organisation and the consolidated group accounts of each local government participating in the Council Controlled Organisation must be submitted to the Auditor-General within 3 months of completion of the audit.

6.14. Power to invest (*New subsection (3) added to existing section*)

- (1) Subject to the regulations, money held in the municipal fund or the trust fund of a local government that is not, for the time being, required by the local government for any other purpose may be invested —
 - (a) in accordance with Part III of the *Trustees Act 1962*; or
 - (b) in an investment approved by the Minister on the advice and recommendation of the Treasurer.
- (2) Regulations in relation to investments by local governments may —
 - (a) provide for the manner in which an approval under subsection (1)(b) may be sought;
 - (b) prescribe classes of investment which may be made without the need to comply with subsection (1)(b);
 - (c) prescribe circumstances in which a local government is required to invest money held by it;
 - (d) provide for the application of investment earnings; and
 - (e) generally provide for the management of those investments.
- (3) This section does not apply to participation in a Council Controlled Organisation established in accordance with this Act.

6.21. Restrictions on borrowing (*New subsection (2)(b) added to existing section*)

- (1) Except in the case of:
 - (a) overdrawings on current account from a bank or other financial institution; and
 - (b) such other form of financial accommodation (if any) as is determined by the Treasurer and notified to local governments in the State, a local

government is only to exercise a power under section 6.20(1) with the prior approval of the Treasurer or a person authorised in that behalf by the Treasurer.

- (2) Where, under section 6.20(1), a local government borrows money, obtains credit or arranges for financial accommodation to be extended to the local government that money, credit or financial accommodation is only to be secured by giving security over:
 - (a) the general funds of the local government; or
 - (b) land owned in freehold title by the local government.
- (3) The Treasurer or a person authorised in that behalf by the Treasurer may give a direction in writing to a local government with respect to the exercise of its power under section 6.20(1) either generally or in relation to a particular proposed borrowing and the local government is to give effect to any such direction.
- (4) In this section and in section 6.23 —
“general funds” means the revenue or income from —
 - (a) general rates;
 - (b) Government grants which were not given to the local government for a specific purpose; and
 - (c) such other sources as are prescribed.

Proposed inclusions in Local Government (Functions and General) Regulations 1996

Part 8 – Council Controlled Organisation (*new part*)

39. Statements of Intent - s. 3.60F

- (1) The purpose of a Statement of Intent is to:
 - (a) state publicly the activities and intentions of a Council Controlled Organisation for the year and the objectives to which those activities will contribute; and
 - (b) provide an opportunity for shareholders to influence the direction of the organisation; and
 - (c) provide a basis for the accountability of the directors to their shareholders for the performance of the Council Controlled Organisation.
- (2) The board of a Council Controlled Organisation must deliver to its shareholders a draft Statement of Intent on or before 31 March each year.
- (3) The board must—
 - (a) consider any comments on the draft Statement of Intent that are made to it within 2 months of 31 March by the shareholders or by any of them; and
 - (b) deliver the completed Statement of Intent to the shareholders on or before 30 June each year.
- (4) The board may, by written notice, modify a Statement of Intent at any time if the board has first—

- (a) given written notice to the shareholders of the proposed modification; and
 - (b) considered any comments made on the proposed modification by the shareholders or by any of them within -
 - (i) 1 month after the date on which the notice under paragraph (a) was given; or
 - (ii) any shorter period that the shareholders may agree.
- (5) Despite any other provision of the Act or of the constitution of any Council Controlled Organisation, the shareholders of a Council Controlled Organisation may, by resolution, require the board to modify the Statement of Intent by including or omitting any provision or provisions of the kind referred to in clause 8 (a) to (h), and the board must comply with the resolution.
- (6) Before giving notice of the resolution to the board, the shareholders must consult the board concerned as to the matters to be referred to in the notice.
- (7) A completed Statement of Intent and each modification that is adopted to a Statement of Intent must be made available to the public by the board within 1 month after the date on which it is delivered to the shareholders or adopted, as the case may be.
- (8) A Statement of Intent must, to the extent that is appropriate given the organisational form of the Council Controlled Organisation, specify for the Council Controlled Organisation and its subsidiaries (if any) (**group**), and in respect of the financial year immediately following the financial year in which it is required by subregulation 3(b) to be delivered and each of the immediately following 2 financial years, the following information:
- (a) the objectives of the group; and
 - (b) a statement of the board’s approach to governance of the group; and
 - (c) the nature and scope of the activities to be undertaken by the group; and
 - (d) the ratio of consolidated shareholders’ funds to total assets, and the definitions of those terms; and
 - (e) the policy of the board in relation to dividends; and
 - (f) the accounting policies of the group; and
 - (g) the performance targets and other measures by which the performance of the group may be judged in relation to its objectives; and
 - (h) the kind of information to be provided to the shareholders by the group during the course of those financial years, including the information to be included in each half-yearly report (and, in particular, what prospective financial information is required and how it is to be presented); and
 - (i) the board’s estimate of the commercial value of the shareholders’ investment in the group and the manner in which, and the times at which, that value is to be reassessed; and
 - (ii) any other matters that are agreed by the shareholders and the board.
- (9) If a Council Controlled Organisation has undertaken to obtain or has obtained compensation from its shareholders in respect of any activity, this undertaking or the amount of compensation obtained must be recorded in:
- (a) the annual report of the Council Controlled Organisation; and
 - (b) the annual report of the local government shareholder(s).

- (10) Any financial information, including (but not limited to) forecast financial information, must be prepared in accordance with the relevant Australian Accounting Standard as defined in the *Local Government (Financial Management) Regulations 1996*.

40. Business Plans – s.3.60A

- (1) The purpose of a Business Plan is to:
- (a) state publicly the proposed activities of a Council Controlled Organisation in sufficient detail to enable persons wishing to make a submission in relation to section 3.60A of the Act to be properly informed of the anticipated financial affairs of Council Controlled Organisation and the effect of its establishment and operation on:
 - (i) the local government(s) proposing to participate in the Council Controlled Organisation; and
 - (ii) any other entity performing similar functions to those of the proposed Council Controlled Organisation;
 - (b) provide a basis for the accountability of the directors to their shareholders for the performance of the Council Controlled Organisation.
- (2) A local government proposing to form or participate in a Council Controlled Organisation must prepare a Business Plan in relation to the first 5 years of operation of the Council Controlled Organisation prior to inviting public submissions on the proposal.
- (3) A Business Plan prepared in accordance with section 3.60A must, to the extent that is appropriate given the organisational form of the Council Controlled Organisation, specify for the group comprising the Council Controlled Organisation and its subsidiaries (if any), in respect of the first 5 financial years of its operations, the following information:
- (a) the nature and scope of the activities to be undertaken by the group; and
 - (b) details of any assets proposed to be transferred from a local government to the Council Controlled Organisation; and
 - (c) the proposed funding arrangements for the activities of the group (to the extent that these can reasonably be anticipated); and
 - (d) the following proforma financial reports:
 - (i) Profit and Loss Statement
 - (ii) Balance Sheet
 - (iii) Projected cashflow
- (4) If it is proposed that the Council Controlled Organisation is to undertake functions currently provided by the local government(s), the Business Plan must state clearly:
- (a) the rationale for the proposed transfer of those functions; and
 - (b) the anticipated the effect on the employment of staff currently employed by the local government(s) in performing those functions.
- (5) Any financial information and proforma financial reports must be prepared in accordance with the relevant Australian Accounting Standard as defined in the *Local Government (Financial Management) Regulations 1996*.

41. Annual Reports – s.3.60G

An annual report on the operations of a Council Controlled Organisation under subsection 3.60G(4) must -

- (a) contain the information that is necessary to enable an informed assessment of the operations of that Council Controlled Organisation and its subsidiaries (**group**), including -
 - (i) a comparison of the performance of the group with the Statement(s) of Intent; and
 - (ii) an explanation of any material variances between that performance and the Statement(s) of Intent; and
- (b) state the dividend, if any, authorised to be paid or the maximum dividend proposed to be paid by the Council Controlled Organisation for its equity securities (other than fixed interest securities) for the financial year to which the report relates.
- (c) include audited consolidated financial statements for that financial year for the group and an auditor's report on -
 - (i) those financial statements; and
 - (ii) the performance targets and other measures by which performance was judged in relation to that group's objectives

Amendments to Local Government (Financial Management) Regulations 1996

A number of amendments will be required to the *Local Government (Financial Management) Regulations 1996* in relation to the accounting treatment of Council Controlled Organisations in the accounts of local governments and the proposed financial reporting requirements.