14 August 2015

Independent Pricing & Regulatory Review Tribunal
Level 15
2-24 Rawson Place
SYDNEY NSW 2000

Via website: www.ipart.nsw.gov.au - online submission

To Whom It May Concern

Re: IPART Review of reporting and compliance burdens on Local Government

The Southern Sydney Regional Organisation of Councils (SSROC) is an association of sixteen municipal and city councils. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member Councils cover a population of over 1.6 million, or one third of the population of Sydney.

General Managers of SSROC member Councils agreed at their meeting on March 5 2015, to set up a Red Tape Reduction Committee. This committee is focused on identifying areas of inefficiency both internally within councils and in its relationships with the State and Federal governments. The Committee met on 20 July to discuss this submission.

In order to make this submission within the timeframe of the review, it has not been possible for it to be reviewed and endorsed by the ROC. Please therefore consider this submission to be a draft, and I will get in touch if any issues arise as it is reviewed.

Does Appendix B of this paper accurately represent the regulatory functions of councils, as imposed? Please identify any missing functions or amendments required.

It appears to satisfactorily cover the regulatory functions of councils. However, SSROC is not a council and therefore cannot provide a detailed comment.

In relation to Appendix C of this paper:

- ***Are there any sources of planning, reporting and compliance obligations imposed on councils by the NSW Government? Sources of obligations may include legislation, policies, directions or guidelines.***
- ***What other plans or reports are councils required to prepare?***
  It appears to satisfactorily cover obligations imposed on council by the State Government. However, SSROC is not a council and therefore cannot provide a

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detailed comment.

Are the best practice regulatory principles a sound basis for assessing whether the planning, reporting and compliance obligations imposed by the NSW Government on councils are unnecessary or excessive?

If the principles outlined are applied consistently across analysis undertaken by IPART, SSROC does not see an issue with the best practice regulatory principles guiding it.

How should IPART take into account the NSW Government's Open Data Policy when developing options to streamline or remove reporting requirements on councils?

In some cases rolling existing data into other reports will satisfy the NSW Government's Open Data Policy. An example of this is the requirement for councils to provide an annual Financial Data Return statement. This could be rolled into the required Annual Report. Whilst the data still remains available, it removes the obligation on council to report this information in separate submissions to the Government.

In other cases, IPART needs to evaluate the importance of the information and its impact if it were to become unavailable to the public in line with the NSW Government's Open Data Policy.

Are there any other developments of best practice regulatory principles by other bodies or in other jurisdictions should IPART consider in this review?
SSROC is not in a position to comment on these matters.

What planning, reporting or compliance requirements imposed by the State on councils could be removed? Please provide reasons as to why you believe removal is justified.

SSROC believes that Councils should, in appropriate circumstances, be allowed to avoid the mandatory tendering requirements imposed under the current local government legislation. Whilst the spirit of current legislation aims to drive best value, this is not always the case in practical application. Some examples where appropriate circumstances exist to relax mandatory tendering requirements include where long-term suppliers have an in-depth understanding of council needs. In these cases councils may feel more secure using a trusted supplier that they can demonstrate delivers best value for money. Other circumstances where mandatory tendering requirements should be relaxed includes where a limited supplier market exists, or where a council has a preference for local suppliers which can strengthen the value a council provides to its local community.

SSROC believes that allowing councils to enter into direct negotiations with suppliers where tendering benefits are not logical, regardless of dollar value, can significantly improve efficiencies. This would reduce the unnecessary administrative burdens and red tape placed on councils within the tendering process. There is precedent for this type of action

from other levels of Government, where “waivers” are often used to avoid unnecessary tendering requirements. Whilst this flexibility is available to other levels of Government, councils are left with burdensome requirements for tenders over $150,000. Making waivers available for councils under the appropriate circumstances referred to above is both logical and sensible. This would streamline the way councils conduct the acquisition of infrastructure and services for and improve value for them and their local communities.

The requirement to advertise things such as Development Application decisions, council meeting dates, public consultations amongst other things, has become nonsensical given the trend towards the use of online soucres. Given the preference now to seek information online, it should be sufficient for councils to advertise decisions and meeting dates on its online website, and not be required to advertise in local newspapers. This would cut costs of advertising for councils whilst reducing overall staff time taken on such matters as it would be incorporated into regular website maintenance. Furthermore, publishing online has the potential for far greater reach and accessibility, more effectively achieving the objective of making the material publicly available.

An alternative way to achieve efficiencies in this area is to create a dedicated website to ensure advertising requirements are met. The Scottish Government currently has a model for this purpose (http://www.publiccontractsscotland.gov.uk/) which could be used as a model to meet the legislative requirements of advertising, in one centralised system. This model would mean that information would be more freely available to the public, complementing the NSW Government’s Open Data policy.

Some items (such as setting up independent companies or boards, and getting loans) require approval from the Minister for Local Government under the *Local Government Act* (1993). The current process is inefficient as the time taken by the Minister to respond can be too long for Council timeframes. This can result in projects and initiatives not being undertaken as the relevant approvals are not sourced within an appropriate timeframe. SSROC urges that the requirement for Ministerial approval in all these cases should be reviewed. Where Ministerial approval is considered appropriate, guidelines should be formulated stating how long the Minister has to respond, to ensure that certainty is at the forefront of this process. The guidelines should set out criteria to be met by councils in an easily accessible manner. The timeframes should also be clear so as to avoid confusion for councils when lodging documents to be approved by the Minister for Local Government. This would at least enable councils to plan around the approval period.

What planning, reporting or compliance requirements imposed on the councils by the State Government could be streamlined or reduced in some manner? If you have any suggestions for how the requirement can be streamlined or reduced, please specify.

There are a number of things SSROC believes could be done to reduce and streamline obligations imposed on councils by the State Government.

Tenders under current local government legislation are administratively onerous and time

consuming. The current system requires councils to go to tender for purchases of $150,000 or over. However, current legislation is unclear in its application of the $150,000 spend threshold by not specifying a period of time. For example, if you take a traditional goods and services contract over a 5 year term, this would equate to annual expenditure as low as $30,000 requiring tender. This example of application demonstrates the unreasonable administrative expectations placed on councils when delivering their services. The legislation needs to be amended, at a minimum, to clarify this matter. SSROC believes the current threshold is burdensome as costs for public assets and infrastructure have risen significantly over recent years given recent population growth, and the increase in councils' overall yearly spend. SSROC believes that the threshold for tendering should be raised to a minimum of $250,000 in line with the State Government's own tendering threshold. This threshold should also increase at CPI to ensure that the threshold retains its value in real terms, without the need for constant legislative amendment.

The legislative requirement to accept tenders by way of a physical tender box is burdensome on customer service staff and on tenderers. The NSW Government should give councils the option of accepting tenders by electric means only. Other levels of Government have a centralised tendering system whereby applicants can view current tenders and lodge documents via the website (https://www.tenders.gov.au/). Something similar could be developed by the NSW Government, in collaboration with Local Government peak bodies, for use by councils.

There should be provisions for councils to be able to negotiate with shortlisted parties within the tender process, as long as this is clearly defined in the tender documents. Quite often councils are faced with going to tender for complex items knowing that the most likely outcome is that they will have to resolve to reject tenders and negotiate with a shortlist. Being unable to do this within the current tender process is prohibitive and adds a number of months to the process, and can even result in rejection of all tenders which is frustrating for tenderers as well as councils.

The number of regulatory powers that the State Government has shifted to council in the past 20 years has been considerable. On occasion, the extent of these powers has exceeded council capacity to effectively regulate or manage these powers. An example provided to SSROC is in the area of contaminated lands. Whilst over time councils gain the capacity required through training or hiring of staff, it is an expensive process which puts a strain on councils underlying financial position. SSROC urges IPART to assess such regulations against councils capacity to be an effective regulator in numerous areas, such as contaminated lands.

In terms of Crown Reserves management, a development application requires owner's consent, Trust Manager's support and a letter to the Department of Primary Industries informing them of any works being considered. Whilst this is reasonable, requiring capital works over $500,000 to be done in line with Office of Local Government Guidelines can be challenging, especially for a tenant who is required to make a compliant submission. The amount of time approval can take places an additional burden on council and the tenant as works are often unnecessarily delayed. SSROC suggests that the Office of Local

Government hire a designated employee to manage these affairs to ensure that unnecessary delays are not commonplace, and also provide tenants support to ensure they make a compliant submission under the Guidelines.

Councils have devoted significant resources to developing site-specific Plans of Management. Plans of Management are extremely complex, and are usually prepared by a specialist consultant. One member council commented that these plans cost approximately $40,000 each. Once adopted, Plans of Management act as a deterrent to any future plans for the site in question. This is due to the fact that any amendment or proposal that deviates from the Plan of Management is either refused outright, or requires a costly and time-consuming amendment of the Plan. This process should be streamlined to ensure that Plans of Management can be amended where required without significant cost barriers to councils.

The legislative framework governing the management of public land, primarily within the *Local Government Act* (1993), is onerous. We note that the Local Government Acts Taskforce in 2013 recommended a series of changes aimed at simplifying these provisions, by rolling much of the management of public lands into the Integrated Planning and Reporting (IP&R) framework. To the best of our knowledge, none of these recommendations have been adopted. Further, the Crown Lands Act and the Local Government Act often overlap and intersect each other. Many councils manage sites which contain both Community Land and Crown Land parcels. Where this is the case, it is illogical to have different legislation applying to different parcels of land on the same site. SSROC believes that the management of all public land (community and crown lands) should be consolidated under one piece of legislation. Alternatively, there should be exemptions from the application of different pieces of legislation where the same site contains parcels of Community and Crown Land.

SSROC believes that there is lack of communication within State Government departments and agencies. Several examples were provided to us was in relation to the provision of Out of School Hours Care (OOSH). Currently councils are required to submit plans of the space and a soil report to the regulatory section of the Department of Education and Communities (DEC). Whilst this is necessary, the process could be streamlined to ensure that the information provided is shared to the Schools section of the DEC to ensure that council does not have to waste time submitting these documents a second time. Feedback received from SSROC's member councils also highlighted that this is a common occurrence when seeking approval for Childcare Development Applications.

Currently a council is required to seek public comment on any variation to Voluntary Planning Agreements (VPA) for a period of 28 days. If the variation to a VPA is minor, SSROC believes that seeking public comment on it is an administrative burden on council. SSROC urges IPART to seek examples of this directly from Councils in order to define what a minor variation to a VPA constitutes.

There are minor issues with how SEPP1/clause 4.6 of the Standard Instrument LEP operates. The current process requires approval of the Director-General of the Planning Department for variations greater than 10%, followed by the concurrence of council at a general meeting. If the Director-General refuses to support the variation, council must refuse the application made under SEPP1. This process should be streamlined so that the Director-General's decision is not required, and any application made under SEPP1/clause 4.6 of the Standard Instrument LEP automatically goes to a council meeting for determination. This would simplify the process as it removes the requirement to gain approval from the Director-General, which can unnecessarily delay the processing time for some Development Applications.

SEPP (Exempt and Complying Development Codes) 2008 is highly convoluted. One member council provided feedback that staff occasionally have difficulty determining what is permissible and what is not under the current framework. This should be redrafted in simplified terms for the ease of staff determination, and making it accessible to applicants in order to understand if their Development Application carries exempt or compliance provisions which must be addressed.

Amended Development Application Plans often require re-advertising. Where these variations are minor, councils should have greater discretion to make a decision as to whether re-advertising is necessary. This would reduce the time taken to assess an amended DA application, and cut costs to councils as often they will not have re-advertise a DA application where the amendment being made is minor.

Any variation to a Local Environmental Plan (LEP) requires approval from the Department of Planning. Feedback SSROC has received has stated that this can take months, even for a minor amendment. Amendments are sometimes required to bring the LEP in line with Development Control Plans (DCP). Where this is the case, the delay on the Department of Planning assessing the amendment leads to a period of time where the DCP and the LEP are not coordinated. This can lead to confusion in assessing DAs within that time. SSROC urges IPART to review the need for Departmental approval for minor amendments to LEPs, or look at how the approvals process could be streamlined. Further, often minor amendments to the LEP require re-advertising. This creates an administrative and financial burden on council as staff time and council financial resources are used in this process. Councils should be given greater discretion as to whether re-advertising is warranted on a case-by-case basis.

The time it takes for a new LEP to be Gazetted is burdensome on councils. Whilst council is waiting for an LEP to be Gazetted, it can lead to confusion in assessing DAs and undertaking other operations. This is due to the fact that they are still open to amendment by the Minister for Planning, therefore creating a period of uncertainty for councils. SSROC urges IPART to look at how this process could be streamlined in order to minimise the impact this has on councils day-to-day operations.

Some NSW Government Departments still refuse to accept payment via electronic funds transfer in preference for payment by paper cheque. This is burdensome as it requires

councils to have provision to pay certain things via paper cheque, whilst most business is conducted by way of electronic funds transfer. It also makes financial record keeping harder than it ought to be. An example of a NSW Government agency provided to us by a member council that refuses to accept electronic funds transfer is the Office of State Revenue, when collecting stamp duty payments.

How could the State Government provide greater support to councils to help manage planning, reporting and compliance requirements? Please provide details of the type of support you believe could be provided, and in relation to which planning, reporting or compliance requirement/s.

SSROC believes there are a number of ways that the State Government could provide better support to council in the areas of planning, reporting and compliance obligations.

Through the experiences of our member councils, there can be long delays on receiving responses from the State Government. It would be useful for the Government to institute a Government wide policy on timelines for responding to correspondence. This would ensure that matters are dealt with efficiently and provide some assurance to outside stakeholders as to when they can expect to get a receive a reply. The policy could include provisions for when it is not possible to respond within the timeline provided, such as informing the relevant stakeholder of the reasons and providing a revised timeline.

Another issue identified by our member councils is the reluctance of state agencies to take soft copies of documents. This is largely pertaining to the Department of Planning, but also generally across State Government. The State Government should look at areas where soft copies could be accepted, as the requirement to lodge hardcopy documents is becoming more redundant with technological development. This would ensure that processes could be streamlined in a number of areas, as documents are electronically available, removing the need for the use of postal services or faxes.

The State Government should ensure that prior to shifting regulatory powers they consult with councils to ensure that they have the capabilities to take on the additional responsibility. SSROC believes that this consultation is necessary, as it will give the State Government a better assessment as to whether councils are the appropriate regulatory body. If they are, the State Government should put support and transitional service arrangements in place to ensure councils are well equipped to deal with added regulatory burdens placed on them.

Where appropriate, SSROC believes that the State Government should provide advisory services in order to guide councils to ensure that they are meeting their regulatory duties, and complying with the legislation or reporting requirements within a particular area. This could take the form of the Better Regulation Delivery Office in the United Kingdom. This should be additional to the transitional support arrangements referred to above. This would ensure that there is consistency in the application of State legislation across all LGAs.

SSROC believes that the Office of Local Government could provide a central register of contractors that are used by councils. This would remove a compliance burden on councils and contractors as their details and appropriate certificates would be maintained on a central register. SSROC envisages that this could operate similar to the Contractor Insurance Management System (CIMS) maintained by Statewide Mutual.

Another issue is in the area of online animal registration. One of our member councils stated that they had developed an online system for residents to register their pets. However, this was incompatible with the State Government's system and required council staff to rekey the information to make it compliant. This represents a waste of staff time and places administrative burdens on councils. SSROC believes that the State Government should allow for the pairing of such systems to ensure that when an animal is registered, it automatically updates the State's register.

SSROC believes that there are inefficiencies with the Gateway approval processes. Each of the 5 steps can often take 3-6 months. This can make the process last from 1-5 years. Whilst SSROC believes it is important to undertake rigorous checks and community consultation, the process is inherently slow. This leads to uncertainty for bodies making Planning Proposals as there is no clear timeframe specified within the process. However, as it currently stands, a council has 90 days to respond to a Planning Proposal, otherwise Joint Regional Planning Panels can enact a right of review and progress it to the next stage of the Gateway process. Where councils have not had the resources to respond in time, Planning Proposals progress to the next stage without appropriate council input. Whilst the Gateway process should be sped up, there needs to be a mechanism whereby councils can apply for an extension in assessing a Planning Proposal if their resources are stretched. This would ensure that each Planning Proposal has the opportunity to receive appropriate council feedback before it is progressed to the next stage of the Gateway process.

Do the cost categories (as outlined in the paper) adequately cover the impacts on planning, reporting and compliance obligations placed on local government by the State Government? If not, please detail any additional impacts.

It appears to satisfactorily cover the impacts on councils. However, SSROC is not a council and therefore cannot provide a detailed comment.

Do the planning, reporting and compliance obligations placed on local government by the State Government have any additional qualitative impacts? These may be impacts on councils, the NSW Government or the wider community.

SSROC is not in a position to comment on these matters.

In relation to any planning, reporting or compliance obligations that you identify as unnecessary or excessive, please provide details of the costs involved in undertaking the obligation.

SSROC's submission is based on council feedback. We do not have access to any data that would allow us to estimate these costs.

In relation to any planning, reporting or compliance obligations that you identify could be removed, streamlined or reduced, what proportion (%) of the costs involved would be saved by doing so?

SSROC's submission is based on council feedback. We do not have access to any data that would allow us to estimate these costs.

In relation to any planning, reporting or compliance obligations that you identify as unnecessary or excessive, what are the savings to NSW Government from removing or streamlining these obligations?

SSROC is not in a position to quantitatively assess this. In general terms, SSROC envisages that there would be savings stemming from simplified processes, reduced oversight and removal of duplication from increased information sharing.

Are there any more qualitative benefits that would be realized through a reduction in regulatory burdens on council? If so, please describe these benefits.

It would largely be beneficial to the community. This is due to the fact that councils would have more time to focus on core service delivery rather than planning, reporting and compliance obligations.

What are the risks to the community or NSW Government from removing or reducing the planning, reporting or compliance obligations identified as inefficient or unnecessary?
SSROC is not in a position to comment on these matters.

What are the risks to councils from removing or reducing the planning, reporting or compliance obligations identified as inefficient or unnecessary?

SSROC is not in a position to comment on these matters.

Thank you for the opportunity to comment on the discussion paper. I look forward to the results of the review.

Yours sincerely

Namoi Dougall
General Manager
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