

Submission to the Local Government Act Review
Moreland City Council - December 2015

Moreland City Council welcomes the opportunity to make a submission to the review of the Local Government Act and hopes that the review will result in an Act that provides better guidance for Councillors and officers and removes some of the ambiguity that is currently present.

- Moreland recognises that Local Government is a complex tier of government with a range of functions being performed. Council staff hold particular roles that work with the Act requirements but there are many instances where there is no guidance on how Council should undertake particular duties or roles and responsibilities that cross with other prescribed legislation.
- Part 1A - Local Government Charter - Members of the community are unlikely to know what the key objectives, roles and functions of Council are. This needs to be made clearer to the community to enhance community satisfaction rates of Local Government.

Chapter 2: The role of councils

Empowerment and regulation of councils

- Council supports the proposal not to change the Local Government Charter and Preamble (for the reasons laid out in Chapter 2). Any attempt to prescriptively outline the role and objectives of local governments will inherently limit the power of Council to respond to the needs of its community.
- Council would prefer the approach of providing general powers of competence to Council's, however support current processes that contribute to transparency and good governance.

Administrative decision making

- The Act should provide clearer guidance on the making of semi-judicial decisions that accords with administrative law requirements but also recognises the uniquely democratic and constitutional status of Councils.
- Council supports the position that any approach to ensuring that council decisions are made appropriately will need to determine an appropriate balance between state oversight (external merits review), judicial oversight (judicial review) and deference to democratic council processes.

Chapter 3: How councils are elected

Voting and Ballot Counting Systems

- Council agrees that ballot counting systems for council elections should be the same as for State and Federal elections to minimise voter confusion.
- However, the concept of partial preferential vote counting for local government elections in multi-member wards and unsubdivided councils should be explored. This is

particularly the case where significant numbers of candidates in a ward makes it difficult for voters to complete the ballot paper without mistakes.

- Part 3 Elections:
 - s41A Council's currently have the option to opt to either have a postal or attendance election. There are pros and cons with either option. With regard to postal elections the costs are considerably less compared to attendance elections, however attendance elections allow for community engagement and they align with the State and Federal election process. Postal elections provide voters with more information about who they are voting for via the candidate statements provided in the postal pack, potentially allowing people to make a more considered decision compared to at a polling booth where they may be casting their vote based on information provided on a how to vote card. This process should be reviewed at a minimum in an effort to reduce costs for the community and make voters more trusting of the process. As Moreland is only one of the few Council's who continues to hold attendance elections, it will be considering its options and make a decision on whether it will be conducting the October 2016 election by attendance or postal election when Council meets in February 2016.
 - The current programs in place to attract female candidates and young people to stand for Council are supported and should continue. The last 10 years have seen significant increases in female and young candidates, many of which have been successful (especially in the metropolitan Councils).

Voter Franchise

- Simplifying voting entitlement is supported.
- However, Council also supports the concept of a wide voter franchise such that renters and business owners also have an opportunity to vote in the municipality (subject to no more than one vote in each municipality).
- Any opportunity to reduce the administrative burden of the 'CEO's list' would be supported.

Requirements and Qualifications of Councillors

- Currently a person can be disqualified from serving as a Councillor if they have been absent from four consecutive meetings of the Council without leave. Consideration should be given to how this relates to situations where Councillors attend meetings, but only for a short period.

Information on Candidates

- Council would support actions to inform voters about candidates. In particular, this was an issue for Moreland at the 2012 elections as the VEC would not allow a summary from each candidates (similar to what is sent to voters in a postal ballot process) to be placed on its website (Moreland conducted an attendance ballot) and legislation prevents Council resources (i.e. the Council website) from being used to provide this information.

- Greater use of the internet should be considered to enable the dissemination of information about candidates.

Donations

- Council would support increased transparency in the provision of donations to candidates running up to a council election.

Caretaker provisions

- Council supports the removal of onerous publication certification requirements on council CEO's during the caretaker period.
- It is agreed that if reforms are made, it is important caretaker arrangements are reconciled with statutory planning timelines imposed on local government.

Polling Method

- s42 Voting and counting methods - Voters should have the option of either proportional (single member wards) or preferential voting (multi member wards) so that there are less informal votes cast. There have been concerns raised in the sector about the level of informal voting at local government elections and the impact this has. In some municipalities there is already low voter turnout in some wards and as a result consideration should be given to the ability of voters to only fill in some boxes. An alternative voting method may be an online option. This may increase the voter turnout.

The adequacy of the existing offences and complaint handling provisions

- Following the 2012 local government elections two cases in relation to Moreland were heard at the Municipal Electoral Tribunal. One of these cases took 8 months to resolve and was eventually struck out and the other took over 2 years to resolve with the candidate found not guilty. If the outcomes had been different in either of those cases it would have caused a count back to occur almost 2 years into the Council term. Council supports the handling of complaints received as a result of the election to be dealt with quicker with the State providing more resources at peak times to manage this process.

Election service provider

- Council supports the appointment of the VEC as the election service provider and the removal of the need to consider publicly tendering this service.

Non-Voting Enforcement

- Council supports the VEC assuming the responsibility for all aspects of the prosecution process, including prosecution for failure to pay fines for failing to vote. Any revenue received should be used to reduce the cost of the election to the Council.

Chapter 5: Planning & Reporting

- Division 3 Best Value Principles - there should continue to be legislation that focuses on the need for Councils to deliver value for money services and for this to be continually tested, however consideration should be given to renaming it to Service Planning or Continuous Improvement. The principles that underpin this section are good, however there needs to be some stronger alignment between this and the new Local Government Performance Reporting Framework (LGPRF) legislation, as many of these indicators are measuring this, especially the service indicators. When this legislation was created, it was very focused on planning & reporting, but has ignored the existing best value legislation and the intent behind it. By default this legislation will also start to set service standards.
- s 246 *Local Government Amendment (Performance reporting and Accountability) Act 2014*. There is some overlap in reporting requirements across Acts for example quarterly reporting to the Department of Health and Human Services and Department of Planning in relation to Planning Permit Activity Reporting as well as some Council meeting and Councillor attendance records in the Annual Report. The process should be streamlined across Acts to allow for better reporting efficiencies.
- Consideration should be given to developing a Community Plan that has longer timeframes than the 4 year term and refreshing this mid way through the Council term. This would allow a longer term understanding of financial and service commitments and for Council Plans to contemplate and fit into the long term vision of the community.
- s131 Annual Report – the current legislative requirements for the preparation of the annual report are onerous on Council. They do not have a direct link to the requirements in the Accountability Framework. The need to give public notice that the Annual Report has been prepared is not considered necessary and publication and notice that the document is on Council's website should be sufficient.

Chapter 6: Council Rates and Charges

s163 Special rate and special charge

- Commercial special rates and charges – Consideration should be given to expanding the current scope of schemes and to combine marketing and business development schemes so they include other activities such as physical improvements, maintenance, provision of services and facilities.
- In regards to the current practice of specifying a centre special rate – consider ongoing (or indefinite) program provided that the correct checks and auditing are in place or allowing the business operators to discontinue the program if it is operating ineffectively.
- Structure the special rate or special charge projects to be paid by both the property owner and business occupier of the property on a 50/50 basis. This would take into consideration how an improved shopping strip benefits the property owner in the long term as well as the short term benefit for the operating business. Further discussion, research and education on alternative funding models (such as BIDS) for the longer term and future of shopping strip support could assist this approach.

- Councils have limits to their balance sheets. Consideration should be given to allowing a Council to declare a special rate to enable the ratepayer to repay a loan from an external financier (i.e.: the loan is not on Council's balance sheet) through the rating process. Council would need to be satisfied that there is a public benefit. This would enable 3rd party funding for personal infrastructure (i.e.: solar panels, water tanks) and would only apply to ratepayers that have actively applied to be part of the scheme. The security created by securing the debt against the property would lower the cost of the loan to the ratepayer by reducing the risk of default and it would allow the asset which is part of the property, and the outstanding special charge liability, to transfer to the new owner upon sale. Refer to the submission received from the Northern Alliance for Greenhouse Action (NAGA) for further details.
- s161 Differential rates - Council's should have the ability to administer their own differential rates (to address matters affecting the community) and not be constrained by the Minister.
- S167 Payment of rates and charges - Currently the payment date for payment of rates in one payment is fixed by the Minister (15 February each year). This should be removed and the four instalment dates relied on.

Chapter 7: Service Delivery & Financial Decision Making

- Council supports steps to improve the alignment and integration of the 12 year Community Vision, the Council Plan, the Strategic Resource Plan (also known as the 5 Year Financial Plan) and the annual Budget.
- While the need for public scrutiny is accepted, Council would argue that the proper place for this scrutiny is on the Council Plan and the Strategic Resource Plan (also known as the 5 Year Financial Plan). This would encourage a longer term view and a more strategic view and allow the consultation to occur earlier in the year. The feedback could then inform the annual Budget. Community feedback on the annual Budget typically occurs late in the process and focuses on individual projects. If this feedback requires major changes, it is almost impossible to make these to the Budget and still meet the deadline of 30 June.
- Recent Changes to capital reporting in the budget are onerous and appear to have little benefit.
- Protecting and advancing the interests of local government is important and local government needs to resist cuts to State Government grants and cost-shifting generally. There are many examples, as detailed below, of cost shifting that have occurred by other tiers of government with little or no consultation:
 - Home and Community Care – Historical and new funding cuts, challenges and opportunities
 - Library Services
 - Maternal and Child Health
 - School Crossing Supervision
 - State Government levies on landfill, animal registration and congestion.
- Statutory fees that prohibit full cost recovery:

- State-set planning fees have been frozen for 14 years. In the period ending the September quarter 43% of planning costs in Moreland were subsidised by ratepayers.
 - Building fees
 - Health fees
 - Home and Community Care related fees
- Statutory requirements which lead to increased costs such as the following examples:
 - Line clearance
 - New national policy of 15 hours kinder for four-year olds
- s186 Restriction on power to enter into contracts – the thresholds for public tender should be increased to \$200,000 for goods and services and \$300,000 for works and an annual index applied. This is to reflect the market change over the years and striking for a better balance between control and efficiency. Consideration needs to be given to the fact that the sector has become more mature in having implemented procurement policies and guidelines for good governance.
- s193 Entrepreneurial Powers - the thresholds set in s193(5c) should be significantly increased. The current thresholds make it almost impossible to execute the entrepreneurial powers as there are too many administrative and political/legal hurdles relative to the benefits for projects of this low size. With the implementation of rate capping and the ongoing pressure for local government to be more entrepreneurial, it is important that Councils are given more flexibility to pursue means of generating non-rates revenue and improving efficiency (while at the same time managing risk).
- s196 Regional libraries – although Moreland is not part of the regional library structure it believes that the current model needs to be reviewed. Council's who are not part of this model and are operating multiple libraries should have the ability to receive equal amounts of funding from the State as those that fall under the regional library model.

Chapter 8: Councillors conduct, offences and enforcement

- s80A Assembly of Council reporting provisions – the current provisions are difficult to administer, particularly in ensuring that all of these assemblies are being recorded. Separate to this, the requirement to report the assembly of council records to the next available council meeting creates unnecessary council reports. It is recommended that reporting of this be allowed on Council's website.
- s76BA - A review of the Councillors Conduct principles is required. The current provisions are lengthy and confusing for both staff and Councillors. There are too many variations of direct and indirect interest and it is recommended that these be written in plain English to give better guidance. Taking the provisions back to what was previously required (either a pecuniary interest or not) was a simpler model and should be revisited.
- Division 1 - The Mayor and other Councillors - As local government provides a range of services, the State could offer more guidance and resourcing for Council's to induct newly elected Councillors by providing induction programs that cover such issues as

planning, finances, Councillor conduct provisions etc and the opportunity to run refresher training as required.

- s72 Term of office - The current term of Council for a four year period should remain and the preference is for Council's to have an odd number of Councillors representing municipalities to help balance numbers in the Chamber and avoid tied votes at meetings.
- s74 Councillor allowances/expenses - The Act should recognise that some Councillors are spending more than 30 hours per week in undertaking their Councillor role on top of holding a job. Councillors should be appropriately compensated for their time.

Additional matters

- Guidelines - there are a number of key documents that Councils need to prepare and each Council does this independently of each other with little legislative guidance in some instances. Consideration should be given for the State Government to provide Councils with more comprehensive guidelines for the following to ensure consistency across Councils:

- Councillor and Employee Codes of Conduct
- Caretaker Policies
- Councillors use of equipment
- Councillor and employee expense reimbursement policies
- Local Laws - specifically in relation to conduct of meetings
- Procurement Policies
- Assembly of Council records
- Council reports

This approach would allow each Council to tailor such documents to include any local additional requirement.

- Complaints handling - the Act is silent on how Council's should handle complaints and as a result each Council manages this process differently. Clear guidance on how to handle abusive and vexatious complaints and the ability to withdraw services to people who are being violent would be of assistance.

Planning, Property & Infrastructure

- s190 restriction on power to lease land - A Council currently has power to lease any land to any person for a term of 50 years or lease. This should be increased to 99 years in line with the State Government terms to allow people (especially in relation to business transactions) more security.
- s198 Sewers and drains vested in Council - Councils are the local drainage authority, however, the Act does not provide some powers essential to carry out its drainage duties. Consideration to amending the legislation to :
 1. Clarify ownership of the drainage pipes;
 2. Provide the same power of access to easements as other drainage authorities, for the easements not specifically in favour of Council; and

3. Provide Councils with the same powers in relation to building over easements that the other drainage authorities have in the *Water Act 1989*.

See **Attachment 1** for the changes proposed.

- Clause 4 of Schedule 11 to the Act - Powers of Council over traffic provides that a Council may move or impound any vehicle that is causing an unlawful obstruction, or that is unlawfully parked or left standing in an area designated by the Minister (referred to in this instrument as a 'tow-away area'), and may charge the owner of the vehicle a fee up to the amount of the fee set for the purposes of clause 3(1)(c). Council's Local Law says it can only tow vehicles that are abandoned or unregistered. This schedule should include a clause that gives Council's the power to have a vehicle towed for the purposes of conducting important Council works such as road works, traffic management device installation, installation of parking sensors, picking up waste etc if reasonable means have been undertaken to try and have the offending vehicle moved.

Communications

The current Act does not address opportunities for changing technologies and as a result communication and consultation requirements are outdated. Consideration on how new and emerging technologies can be incorporated into local government practices is recommended.

1. MODIFY EXISTING SECTION 198

198. Sewers and drains vested in the Council

(1) The following are vesting in the Council are under the management and control of the Council –

(a) Sewers and drains that the Council has listed in its register of assets;

The word ‘public’ (sewers and drains) is deleted because there is no definition of 'public sewer' or 'public drain' raising doubts about Council ownership of its drains in drainage easements.

Each Council is required to keep a register of its assets under the *Local Government (Finance and Reporting) Regulations 2004*, all its drains will be in that Register

(b) Firstly, this sub-clause is no longer necessary, given the changes to sub-clause (a). Secondly, some Councils do not accept ownership of the domestic drains between the property boundary and the kerb and channel.

(c) Works and materials relating to (a)

This section does not apply to any sewers and drains vested in another Council or a Minister, the Crown or any public body.

2. INTRODUCE NEW SECTION

(1) Drainage easements vested in the Council

This is a new Clause. Council is the local drainage Council. This clause is required because most (particularly pre-1988) titles show drainage easements without specifically mentioning Council. (perhaps a now defunct Act made it unnecessary during last century). This leaves each Council without a legal right to access the easements that Council required developers to create within each subdivision. Conversations with six other Councils found that in practice, nearly all Councils do not believe they lack the legal right. The City of Melbourne and Moreland City Council are two of the few that understand the correct legal situation.

(2) This section does not remove the rights of others to the same easements.

(3) This section does not apply to implied easements.

Implied easements exist under Section 12(2) of the *Subdivision Act 1988* and relate to common land and walls of buildings. This type of easement is not appropriate for Council stormwater drains.

3. COPY (MODIFIED) SECTION 148 OF THE WATER ACT 198

148 Structures over works

This is taken straight from Section 148 of the *Water Act 1989*; modified for the Local Government Act. This is required:

- To strengthen Council's rights to control what is placed over easements, which is important given the density of buildings constructed up to the edge of each easement. Other sewer and drainage authorities have this power under the Water Act;
- To protect Council drains that had to be constructed at the time, but the legislation did not allow for the creation of an easement (e.g. a previous version of the Health Act). Other sewer and drainage authorities have this power.

(1) A person must not, without consent of the Council, cause or permit-

(a) any structure to be built, or the level of land altered by more than 0.3 metres, on land over which-

(i) an easement exists in favour of the Council; or

(ii) an easement exists for sewerage or drainage purposes; or

(b) any structure to be built, or the level of the land altered by more than 0.3 metres within 1 metre laterally of any sewer or drain of the Council; or

(c) any structure to be built above or below any area prohibited by paragraph (b).

(2) An application for the Council's consent must be made in the manner determined by the Council, and must be accompanied by any plans and other information that the Council requires.

(3) The Council may-

(a) refuse its consent; or

(b) consent; or

(c) consent subject to any terms and conditions.