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Local Government Act Review Secretariat
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Dear Secretariat

Submission to Local Government Act Review – Discussion Paper

In response to the Review of the Local Government Act Discussion Paper please find enclosed a submission from East Gippsland Shire Council.

This submission was formally endorsed by Council at its meeting held 15 December, 2015

If you require any further information in relation to the submission please contact Maryanne Bennett, Director Corporate.

Yours sincerely.



ANDREW FEARN-WANNAN
Manager Governance

Encl.

EAST GIPPSLAND SHIRE COUNCIL SUBMISSION

RESPONSE TO REVIEW OF LOCAL GOVERNMENT ACT 1989 – DISCUSSION PAPER

Chapter 2: The role of Councils

Questions from Discussion Paper	Response / Comment
<p>What should the key roles and functions of Council be?</p>	<p>The defining of general powers of competence is supported. Also supported are clear definitions around the roles and functions for which Local Government will not be responsible.</p> <p>The relationship between Local Government and other tiers of government should be clearly articulated. In particular, the role of Local Government as a respected partner should be clearly recognised and articulated to ensure that interactions between Local Government and other tiers of Government are conducted in an atmosphere of mutual respect and genuine consultation, with the objective of achieving equitable and agreed outcomes.</p>
<p>Does describing the key objectives, roles and functions of Councils in the Local Government Act 1989 assist Councillors, Council staff and members of the community understand the role that Councils play?</p> <p>Should these key objectives, roles and functions be retained in the LGA or revised in any way?</p>	<p>The objectives roles and functions in the LGA are currently very generic and provide only limited assistance to Councillors, Council staff and members of the community in understanding the role that Councils play.</p> <p>The defining of general powers of competence should be supported but with the limitations clearly defining the areas where Councils should not be involved.</p>
<p>What powers are required by Councils to perform these roles and functions?</p> <p>Should there be any limitations to Council powers?</p>	<p>The defining of general powers of competence should be supported but with the limitations clearly defining the areas where Councils should not be involved.</p>
<p>Which provisions in the LGA should be normative (setting out desirable behaviour) general (setting out broad principles to be followed) and which should set out prescriptive (detailed) requirements?</p>	<p>Enabling provisions should only be included in the new LGA to enable Council operate efficiently. For example the provisions Council needs to undertake in raising rates and charges or making local laws or any function that is a State Government granted power.</p> <p>Prescriptive provisions need to be clearly defined and the consequences of non-compliance both organisationally and individually should be relative to the non-compliance.</p>
<p>Should the legislation provide consequences such as penalties or sanctions, for any non-compliance with either the general and prescriptive provisions? If so, what form should these take?</p>	<p>There seems to be little value in financially penalising a Council as an entity for non-compliance. Penalties or sanctions would have to be carefully targeted and directed at the identifiable source of any non-compliance. Depending on the extent of the non-compliance public reporting may be the most effective “penalty” in the first instance.</p>
<p><i>Any other issues relevant but not covered</i></p>	

Chapter 3: Questions on how Councils are elected

Questions from Discussion Paper	Response / Comment
Should Council's be able to be constituted by wards containing different numbers of Councillors in different wards?	This would result in different quota requirements between wards and an imbalance in the minimum level of community support required for councillors to be elected.
Should only voters on the State roll be entitled to vote at Council elections?	Changing the current automatic entitlement of non-resident property owners would potentially disenfranchise a significant group that has an interest in the community and create an equity issue for ratepayers.
What would be the best way for additional information on candidates to be provided by them to voters?	<p>Minimum information about candidates should be mandated to improve the opportunity for voters to make better informed voting decisions (e.g. community involvement/contribution; involvement in/ experience with Federal, State and/or Local Government; broad outline of work history, if any).</p> <p>Scope should be provided for candidates to provide additional information on the internet, including a complete resume and what they would seek to achieve for the community. A facilitated candidate public forum or debate should be conducted to increase the exposure of candidates.</p>
What are the key elements of a system aimed at ensuring the integrity of Council elections that should be included in the LGA?	The current system of Councils having the ability to choose their electoral structure should be retained.
<p>To ensure integrity of the electoral system should additional powers be provided to:</p> <p>a) the Minister for Local Government</p> <p>b) the Victorian Electoral Commission?</p> <p>c) Council CEOs?</p>	<p>The recently passed Local Government Amendment (Improved Governance) Act 2015 provides an excellent basis for modernising Council elections.</p> <p>The appointment of the Victorian Electoral Commission as the statutory provider of Council election services is strongly supported.</p>
<i>Any other issues relevant but not covered</i>	<p>The current system of automatically enrolling property owners who are not on the State roll works particularly well for Council, as it has a high number of absentee owners.</p> <p>Compulsory voting should continue only to apply to State enrolled voters and also be consistent with State elections.</p> <p>The ability for candidate "how to vote material" to be included in the VEC postal pack would assist voters and in particular, absentee owners.</p> <p>The current arrangements for the caretaker period, campaign donations and the ability of Council to choose their polling method should be maintained.</p>

Chapter 4: How Councils Operate

Questions from Discussion Paper	Response / Comment
Should Mayors and Councillors be part time or full time?	<p>The requirements of the Mayoral role would vary significantly from Council to Council, due to the diversity of Local Government Councils across the State.</p> <p>The role of Councillor should not be full time.</p>
Do you think the current arrangements governing Council meetings are necessary in the LGA and if so what sanctions are appropriate for Councils that do not comply with these requirements?	<p>Provisions related to matters such as; Ordinary and Special Meeting types, public notice of meetings, voting requirements and meeting minutes could effectively be addressed through a model Council meeting procedures local law without inclusion in the LGA.</p> <p>Determining whether compliance sanctions are appropriate for Councils is a vexed issue and would be dependent on the nature of any infringement and the purpose in applying a sanction.</p>
Should Councillors be required to be physically present at Council meetings or is it sufficient to attend via electronic means?	<p>With currently available technology and where distance due to the size of the municipality creates an impediment for Councillors to physically attend meetings an electronic option should be available within appropriate guidelines.</p>
How frequently should Council meetings be held and should there be a formal requirement for public participation at these meetings?	<p>Minimum monthly Council meetings and scheduling other meetings as required provides a consistent and reasonable basis to transact Council business.</p> <p>Councils should have discretion to establish mechanisms to facilitate public participation in Council meetings and other forums without this being mandated.</p>
<p>Should the LGA provide a more general requirement for Councils to consult and engage with their communities?</p> <p>If so, what sanctions are appropriate for Councils that do not do so, such as sanctions affecting the validity of the Council decision?</p>	<p>The LGA should require Councils to adopt a minimum standard for engagement or consultation, identifying a minimum timeframe and minimum medium (i.e. gazetted publication).</p>
As part of the public consultation process, is giving notice through a local newspaper the most effective way of notifying the community, or are electronic notifications sufficient?	<p>Consultation should take place through a variety of mediums relevant to the municipality's demography and geography. The requirement of having a 'gazetted' publication nominated under the LGA should remain as minimum.</p>
<p>What are the critical elements of a Council's operations that should be governed by the Local Government Act 1989 (e.g. requirements for mayoral elections, notice of, and requirements for open meetings)?</p>	<p>The current functions, term of office and method of election for the Mayor are seen as satisfactory. Any clarification of the role of the Mayor is supported.</p> <p>The current basis for determining Councillor allowances should be reviewed to include the area of the Municipality.</p> <p>The current requirements governing Council meetings should be retained.</p> <p>The mandatory requirement for Councillors to vote</p>

Questions from Discussion Paper	Response / Comment
	<p>when present at a meeting should be restored.</p> <p>The mandating of public participation at Council Meetings via a question time should be supported.</p>
<p>What penalties or sanctions should be imposed on Councils which do not comply with the requirements relating to their operations?</p>	<p>There seems little value in financially penalising a Council as an entity that fails to comply with the requirements relating to their operations. Sanctions would have to be carefully targeted. Depending on the extent of the failure to comply with the requirements relating to their operations public reporting may be the most effective “penalty”.</p>
<p>Any other issues relevant but not covered</p>	<p>Local Laws current arrangements – It is supported that the review should consider removing the cap as applied to penalty units for local law breaches and reflect the penalty unit as prescribed from time to time under the Monetary Units LGA.</p> <p>As part of the review consideration should be given to infringement notices that are issued under the local law being classified as lodgeable infringements under the Infringements Act 2006. This would reduce the need for non-payment of infringements penalty’s hearings to be released from the Magistrates Court and addressed through the Infringements Court. It is noted that this process may require the review of the Infringements Act 2006 section 7.</p> <p>Section 223 hearings - an electronic attendance option for submitters wishing to be heard should be available within appropriate guidelines.</p> <p>Appointment of staff – Only requirements pertaining to the appointment of the CEO should be included in the LGA. Engagement of Senior Officers (excluding the CEO) should be excluded. Equal employment opportunity principles and other staff related issues currently covered in the LGA but legislated through other instruments should be removed.</p>

Chapter 5: Planning and Reporting

Questions from Discussion Paper	Response / Comment
<p>How could Councils be encouraged to undertake longer term planning that is integrated into existing annual or four-yearly planning and reporting requirements?</p>	<p>Under the current LGA, the development of long-term community plans is not prescribed. Community plans that have been developed are generally aspirational, involve more extensive community consultation and deal with matters often outside local governments' domain and direct control.</p> <p>Consideration of long-term strategies that are activated by operational plans would strengthen Councils planning framework and ensure that Councils respond to changes in the community and business environment by prioritising its operations within its available resources.</p> <p>Long-term financial, asset and human resource planning is important for ensuring that Councils remain sustainable over time. Currently most Councils are preparing 10-Year Financial Plans and have been doing this for some time, encouraged by the MAV STEP Program.</p> <p>This is moving to a more strategic and integrated approach, where all strategies and asset management plans will need to have financial links to long term financial planning.</p> <p>Whether this long-term financial planning should be enshrined in legislation rather than the need for prudent and robust financial planning, is debatable.</p>
<p>Should rates be set four years in advance as part of a Council's priority setting?</p>	<p>No. Even though rate capping will determine rates into the short term future, an elected Council should have the ability to make this rating decision annually. The Strategic Resource Plan factors in proposed increases, but does not lock Council into those.</p>
<p>How should consultation over the Council plan, strategic resource plan, budget and declaring of rates occur, and at what frequency?</p>	<p>Engaging the public in this decision making process will vary, depending on a range of factors including municipality size, location, type and demographic.</p> <p>History shows that normal Council communication processes do not necessarily engage the general public, unless there is some potential direct impact on a ratepayer or group of ratepayers.</p> <p>Consultation should take place through a variety of mediums relevant to the municipality's demography and geography. .</p>
<p>What requirements should be imposed in the LGA on Councils in relation to planning and reporting on their strategy, budget and operations?</p>	<p>The current requirements imposed by the LGA in relation to planning and reporting on their strategy, budget and operations balance the ability of the Council to plan to operate efficiently whilst maintaining the ability of the public to be involved through consultation and scrutiny.</p> <p>Longer term planning should be included as a normative provision.</p>

Questions from Discussion Paper	Response / Comment
Can Council planning and reporting processes be streamlined? If so, how?	<p>A move toward an integrated model would be welcomed to strengthen the planning hierarchy in terms of links between strategic, corporate and resource planning. Consideration should be given to maintaining flexibility and Councils' capacity to tailor approaches to the local context.</p> <p>The development of supporting plans identified in the Australian Centre of Excellence in Local Government report is supported as part of an integrated long-term planning framework that requires the development and delivery of a strategic long-term community plan and an operational plan (corporate business plan) that are supported by informing strategies including asset management,</p>
What rights should be granted to ratepayers to better contribute to Council planning and reporting processes?	<p>The current provisions are seen as adequate. They enable the public to be involved through consultation and scrutiny during the preparation of the Council Plan and Budget.</p> <p>Reporting regularly through open Council meetings is seen as the best method to inform the public on how Council is meeting performance measures and targets set in the Council Plan. However, reporting via Council websites should also be required.</p>
What sanctions should be imposed on Councils not complying with planning and reporting requirements?	<p>There seems little value in financially penalising a Council as an entity for non-compliance. Depending on the extent of the non-compliance, public reporting may be the most effective "penalty".</p>
<i>Any other issues relevant but not covered</i>	<p>There seems little value and benefit in continuing the requirement to submit copies of Councils' strategic documents to the Minister. Advice to the Minister on availability on Council's website should be sufficient.</p>

Chapter 6: Council Rates and Charges

Questions from Discussion Paper	Response / Comment
For the purposes of general rates, should uniform rates be set or should preferential rating systems be mandated? Why?	Councils should continue to have the ability to set differential rates to facilitate overall equity of rating. Each municipality will have unique situations that will influence their rating strategy.
Should owners be legally liable to pay rates and charges in all instances? If not, is section 156(2), which provides that occupiers of land in certain instances are liable to pay rates and charges, appropriate?	The LGA currently allows for the occupier to be liable for rates in certain circumstances. There is no need to change this. Currently certain properties and usages can be exempted from rates. The criteria applying needs to be clearer, with definitions of non rateable properties being worded to ensure eligibility or otherwise can be more readily determined by officers and understood by members of the public.
How could the processes for payment of rates in the LGA be amended to remove unnecessary restrictions and / or red tape on Councils and on ratepayers?	An option to pursue occupiers for unpaid rates is not supported. The current recovery processes in the LGA could be simplified and made clearer for both Council and the ratepayer.
Are the current review and appeal rights of ratepayers in relation to rates and charges in the LGA appropriate? If not, how should they be changed?	There should be consistent review appeals right for all rates and charges with VCAT being the logical body for an appeal after an internal review.
Is the current method of declaring rates and charges based on "land" still appropriate?	In the absence of any equitable alternative continuation of "land" based rating is supported.
What powers do Councils require in relation to levying rates and charges?	The ability to set differential rates and ensuring there is flexibility in the rating structure as well as being able to set service charges at user pays/full cost recovery level should be available to Councils as of right.
What obligations or restrictions should be imposed on Councils in relation to these powers?	Council should be obligated to continue the current system of public consultation with any rating proposal, including the annual budget process. Council should have autonomy to set rates and charges at the level required to deliver necessary services and sustainably manage infrastructure.
What rights should rate-payers have in relation to the exercise of Councils powers in relation to levying rates and charges?	Ratepayers should continue to have the ability to make submissions prior to Council making a rate or charge. Ratepayers should have the ability to challenge a classification or rateability with Council and if not satisfied proceed to VCAT rather than the County Court.
Should there be detailed legislative provisions regarding processes associated with levying rates and charges? If so, are the current processes for levying rates and charges in the LGA appropriate? If not, what	The current processes for levying rates and charges in the LGA are seen as appropriate. Given the pending introduction of rate capping, some of this legislation will need to be updated to fit with those requirements.

Questions from Discussion Paper	Response / Comment
changes should be made?	
What sanctions should be imposed on Councils failing to comply with the requirements relating to levying rates and charges?	This should be a decision for the Minister.
<i>Any other issues relevant but not covered</i>	

Chapter 7: Service Delivery and Financial Decision Making

Questions from Discussion Paper	Response / Comment
Should Councils be required to undertake a public tendering process in all circumstances?	The current provisions seem to provide adequate checks and balances so in the main should be retained.
Should the assessment and approval of applications relating to entrepreneurial activities of Councils be broader than only an assessment of risk and liability?	These provisions require some review, to ensure all aspects of a proposed enterprise that could pose a risk to Council/ratepayers is fully assessed. Depending on the proposed venture, further clarification within the LGA may assist in determining the risk factors.
<p>Should collaborative arrangements between Councils be broadened beyond library services?</p> <p>Should these arrangements require ministerial approval?</p>	<p>Unequivocally, yes. The ability to collaborate with other Councils in terms of knowledge, resource sharing and other activities is essential to facilitate increased service efficiency, reduction of costs for service delivery and provision of a further layer to business continuity planning.</p> <p>There should be no need for ministerial approval for collaborative arrangements between Councils.</p> <p>The LGA should facilitate rather than hinder (as it currently does) Councils seeking to employ staff to provide services to more than one Council.</p>
What powers do Councils need to undertake their financial decision-making functions?	<p>Councils should retain their ability to set their own budget, including determining the level of borrowings that meet its current and future financial parameters of financial planning. The need for loan borrowing approval is supported as a good review process.</p> <p>The LGA should not limit Councils' ability to buy or sell land other than the requirement to obtain an independent valuation and undertake a public consultation process for the sale or exchange of land. The ability for Council to sell land should be based on Council policy.</p> <p>The normative requirement should be for Council to have an investment policy that has been reviewed by its Audit Committee and adopted by Council.</p>
What obligations or restrictions should be imposed on Councils in relation to their financial decision-making functions?	The prescriptive requirements for budgeting and financial reporting, should be reviewed to allow some autonomy in the format and financial information/content when reporting to the Council and community.
<p>Should the LGA contain detailed processes regarding Councils' financial decision-making?</p> <p>If so, what sanctions should apply for non-compliance with these requirements?</p>	The normative approach should apply.
<i>Any other issues relevant but not covered</i>	

Chapter 8: Councillor Conduct, Offences and Enforcement

Questions from Discussion Paper	Response / Comment
How can adherence to the conduct principles by Councillors be improved?	Implementation of a compulsory annual awareness program and establishment of processes as per the recently passed Local Government Amendment (Improved Governance) Bill 2015.
How can the conflict of interest provisions be made simpler?	The existing provisions of Sections 77 A and B are seen as adequate, noting that it is very difficult to cover every circumstance relating to a conflict of interest.
Should the 'misuse of position' offence be broadened or clarified? If so, how?	The existing provisions of the LGA adequately define 'misuse of position'.
Do standards of Councillor conduct need to be improved? If so, how can this be achieved?	There is always room for improvement and implementation of a compulsory annual awareness program is seen as a logical improvement.
What powers do Councils need to deal with instances of Councillor misconduct?	The recently passed Local Government Amendment (Improved Governance) Act 2015 provides an appropriate process and mechanism to respond to alleged Councillor misconduct.
Does the system of Councillor conduct panels need to be improved? If so, how?	The recently passed Local Government Amendment (Improved Governance) Act 2015 has made improvements to the system of Councillor conduct panels.
Is there a need for additional offences to be included in the LGA? If so, what are they?	Similar provisions to Section 77 should also apply to the CEO and staff making it an offence to disclose confidential information.
Is there a need to improve investigation and enforcement of the LGA in any way? If so, how?	No circumstances have been identified to warranting change.
<i>Any other issues relevant but not covered</i>	

Chapter 9: Ministerial Powers

Questions from Discussion Paper	Response / Comment
Should the requirement for Councils to seek ministerial exemptions from a public tendering process be removed, leaving it to Councils to develop, and comply, with their own procurement strategies aimed at ensuring public tendering?	Exemptions from public tendering requirements should be incorporated into Councils' procurement policies subject to prescribed procurement criteria or circumstances.
Does the minister need specific legislated powers to make guidelines at all?	As the minister can issue guidelines to the sector without legislated power it is unwarranted to retain the provision.
Should the minister have the power to intervene in the employment of CEOs and senior staff?	<p>In general, Councils should have autonomy in the employment of Senior Officers.</p> <p>The appointment of the CEO should be a matter for each Council, subject only to minimum probity requirements detailed in the Act.</p> <p>The recently passed Local Government Amendment (Improved Governance) Act 2015 provides the minister with a general power to issue a direction to a Council requiring it to address governance issues on the advice of an inspector or monitor.</p>
Should 'failure to provide good government' be defined in the LGA to provide greater clarity about when intervention is warranted?	While the objective is laudable, due to the complexity of the issues it would seem unlikely any definition could adequately define all situations.
Should there be other grounds for suspension of a Council in addition to the existing grounds, such as strong community support for such intervention?	<p>Strong community support should only be used as grounds for intervention where it relates to a proven failure to provide good government.</p> <p>There should be no provision for Ministerial intervention where a Council decision that has been legally made attracts significant (noisy) opposition from a particular community sector.</p>
Should the role of the minister be described in the LGA? And if so, how should this be described?	The LGA should describe the powers, functions and the role of the Minister. These powers, functions and the role of the Minister should be detailed and referenced to the relevant sections of the LGA.
<p>What powers should be provided to the minister in the LGA:</p> <p>a) in relation to the structure of the sector (i.e. circumstances in which new Councils are established or existing Councils amalgamated, numbers of Councillors etc)?</p> <p>b) to ensure Councils comply with the LGA?</p> <p>c) to ensure the integrity of governance and standards of behaviour?</p>	<p>a) The Minister should have the power to determine issues on the structure of the sector but this determination should be made having regard to an expert panel's recommendations. The Minister should provide a detailed statement where the recommendations of an expert panel or the Inspectorate are not adopted.</p> <p>b) and c) The Minister should have the power to undertake a staged process to ensure compliance and integrity. This should include initial consultation with a Council, ordering of an inquiry and making decisions based on the recommendations of the inquiry.</p>
What penalties should be included in the LGA in relation to Councils not complying	There should be a range of penalties that can be applied, proportionate to the degree of non-compliance.

Questions from Discussion Paper	Response / Comment
with the exercise of the minister's powers?	At the lesser end of the spectrum should be public reporting.
<i>Any other issues relevant but not covered</i>	

Chapter 10: Harmonisation of Local Government Act

Questions from discussion Paper	Response / Comment
What aspects of the LGA should be amended to better harmonise with related legislation?	No specific aspects have been identified.
How can Council responsibilities in relation to other legislation be made clearer?	The logical way to make Council responsibilities in relation to other legislation clearer would be to reference those Acts in Section 3E(g) (Functions of a Council) of the LGA.
<p>Are there provisions in the Local Government Act 1989 that could be improved to clarify their interaction with other legislation? How could they be improved?</p> <p>Is there other Victorian legislation that inappropriately impacts on provisions under the current Act that could be improved or clarified? How could they be improved?</p>	Section 224 – Authorised Officers- Should be amended to nominate any other Acts that authorised officers are able to enforce.
Does the LGA contain any matters that should be transferred to other Victorian legislation? If so, why	Sections 203-208AA Transport – (Roads) Could be incorporated into the Road Management Act to consolidate the Transport functions.
<i>Any other issues relevant but not covered</i>	