

Dear Advisory Committee,

Thank you for the opportunity to provide input into the Local Government Act Review. Please find my submission attached with this cover letter.

My comments and recommendations are based on 12 years of being a close 'watcher' of Glen Eira City Council. Hence, this submission is based entirely on my observations and 'outsider analysis' of what occurs in this particular council. These past 12 years have convinced me of the need for drastic reform in many areas of the Local Government Act and the Planning and Environment Act.

I fully acknowledge the argument that each council is different and that there should be some autonomy and independence since municipalities differ widely in their needs, their demographics, and the aspirations of their communities. However, when legislation allows the letter of the law to supplant the spirit of the law; when unelected and unaccountable officialdom becomes the ruling power in local government instead of democratically elected councillors, then there is a need for prescriptive legislation that restores the balance. And, when councils cannot be trusted to work in a transparent and open fashion, and continue to alienate their residents, then drastic change is required. Whilst my comments derive from experience of one council, the overarching concern of improved transparency and accountability would apply to all local governments.

Consequently, I have taken the liberty of commenting only on those aspects of the discussion paper which I believe must be amended so that the new LGA is able to facilitate and deliver on this need for greater transparency and accountability across the board.

As a final footnote I wish to point out that all of my comments can be substantiated with documentary evidence. I would be willing to either speak with you directly, or forward you any further information you may request.

Thanking you again for your attention,

Yours sincerely,

Dr. Rosetta Manaszewicz

SUBMISSION ON LOCAL GOVERNMENT ACT REVIEW

1. LOCAL GOVERNMENT ACT - SECTION 91: Conduct of Meetings

Contention: The current discretionary requirements allowing councils to determine their own individual meeting procedures does not foster transparency, and equity across councils. When all residents of all municipalities are deemed to be 'equal' under the law, then it is imperative that legislation ensures that this precept is given legal weight. Thus, prescriptive mandates must be incorporated into the amended LGA governing meeting procedures.

Rationale: **As a resident of Glen Eira I feel entirely disenfranchised** by the repeated ratification of a Local Law which places Glen Eira outside the norm and what is considered to be best practice. My concerns focus on the following:

- Glen Eira is **the only council in the state** without provision for a Notice of Motion. (I have gone through every single council's meeting procedures to substantiate this claim). Councillors are therefore denied the legal power to directly raise concerns of their constituents and to have the issue entered onto the agenda. Please note that Glen Eira's 'request for a report' alternative is NOT a viable substitute because of (a) time lag can be several months; (b) often partisan officer reports
- Glen Eira **does not recognise 'dissent from the chair'** as the vast majority of other councils do. Countless times in Glen Eira councillors have been ruled 'out of order' by the chair and when one such councillor requested a 'vote' on the Chairman's ruling he was told that this provision does not exist in the Local Law. A ludicrous Catch 22 situation which allows the gagging of debate and silencing of councillors.
- Glen Eira specifically states that it is the CEO, and CEO alone who is responsible for setting the agenda. To the best of my knowledge, **no other council in the state** has such a clause in its Local Law. Whatever 'private' arrangements may exist, they are 'informal' and have no legal status. This clause cedes absolute legal power to one single unelected individual and if it is his wish, grants him the power to stifle, or worse, deny full and open discussion on contentious issues.
- In Glen Eira several councillors have sat on several financial committees simultaneously, for example: the Audit Committee and the Finance Committee (now defunct). It is noteworthy that the terms of reference for the then Finance Committee included its function as an 'oversight committee' on council finances – thus immediately raising questions of potential conflicts of interest and probity if two councillors sit on both the Audit and Finance committees. Further, given that the State Government guidelines on Audit committees recommends the orderly and regular changeover of external and internal members, it is not in keeping with these principles that one councillor in particular, should sit on the Audit Committee for 9 consecutive years, whilst simultaneously sitting on the Finance Committee for 3 successive years. It is also against the spirit of the guidelines that in Glen Eira's case, 2 external members were repeatedly (re)appointed for up to 19 years straight and one such individual is still on the committee. These decisions were also made in camera and on several occasions were not clearly disclosed in the minutes. When other councils see fit not to impose in camera discussion on such items, then it is clear that Glen Eira residents are once again denied full transparency and accountability. I also draw to the advisory committee's notice the abuse that this reveals of Section 89 of the LGA. If other councils can appoint their external Audit Committee members via an open council meeting, I see no reason why Glen Eira should not be required to follow the same process. Avoiding embarrassment, or uncomfortable questions from the public, is no excuse to designate such matters as 'confidential'. All councils should be operating under the same strictures and public accountability.

- Advisory committees are now de facto Assemblies of Council – locked away from public scrutiny and oversight. The Local Law in Glen Eira excludes all mention pertaining to the governance, reporting, and documenting requirements for these committee meetings. Minutes tabled at council vary extraordinarily – ie. some contain the mover and seconder of a motion, whilst most do not. What is of particular concern is that officer reports are tabled at these advisory committee meetings but are not made public. Ordinary council meetings then include the motion to ‘note and accept’ the recommendations of these various advisory committees. This is a formality, with no discussion or elucidation in 99% of instances. Thus, the rationale for any decision is being made behind closed doors and without any public scrutiny. Many important and potential policies are now being decided by such committees, rather than by full tabling and debate in open chamber and with documented data supporting the recommendation. Various crucial issues have therefore been decided by default – ie carbon neutrality; reviews of Local Laws; amendments for increased pervious surfaces. This I believe is a deliberate attempt to subvert the very principles of transparency and accountability – especially when only two committees contain community representatives who are denied voting rights and are outnumbered by councillors and officers. It is perhaps outside the parameters of this review, but I have received emails from several past community representatives who disagreed strongly with both the reports and minutes that their committees published and wished their opposition to be noted. It was not!
- In Glen Eira, Councillors wishing to ask a formal question of other councillors must submit that question in writing to the CEO 4 days prior to the meeting who then has the power to refuse such questions. Councillor Rights of Reply must also be in writing and submitted to councillor group 48 hours prior to the statement being made. In both these examples, Glen Eira places itself outside what is considered to be ‘robust’ and open debate in other councils. I maintain that the end result is a stage managed performance by all concerned in the council chamber.
- Public questions are held at the end of meetings rather than the beginning thereby denying residents the right to gain feedback on upcoming decisions by councillors. When specific questions are asked of individual councillors, these are often not responded to by the councillor concerned but an all embracing ‘council’ response is proffered. Given that the Councillor Code of Conduct states that councillors are responsible for their decisions and that the rationale for such decision making is presented during discussion on the item, then it is hypocritical at best when residents are denied the right to ask individual councillors questions on their role, their decision making, and their voting.
- Only once in the past 12 years has permission been granted for a resident to address council on an agenda item that was outside Section 223. Otherwise, no ‘interaction’ with the gallery is permitted.
- Minutes are often incorrect and do not capture the actual wording of the resolutions passed. Requests under FOI for access to the tape recordings have been denied both to councillors and to residents, making the checking of such incorrect minutes impossible. I regard this as a blatant abuse of power. Council meetings are public meetings. At least 13 other councils have either audio tapes available, webcasts, etc. To deny residents and councillors access is to condone the distortion of the historical record and, I suspect, breaches the Public Records Act.

RECOMMENDATIONS

- (1) Mandate that every council include provisions for ‘Notice of Motion’ in their meeting procedures.
- (2) Mandate that every council include provisions for ‘dissent from the chair’ in their meeting procedures.
- (3) Mandate that resolutions or recommendations from advisory committees include any relevant officer reports upon which such decisions are based. That these reports be tabled in ordinary council meetings together with the recommendation.
- (4) Mandate that membership of all advisory committees such as the Audit Committee be in accord with any existing State Government guidelines and governance principles.

(5) Mandate that recordings of council meetings be available to the public and to councillors

2. LOCAL GOVERNMENT ACT - SECTION 94 – Appointment of Chief Executive Officer

Contention: The position of CEO should be advertised. Key performance indicators as well as performance reviews should also be made public.

Rationale: Residents in Glen Eira have continually been told that their CEO is the ‘best man for the job’. The current CEO’s position has never been advertised and contract after contract has been renewed. Performance indicators are not in the public domain, and performance reviews are also unavailable. When councillors decide to reappoint, plus granting at least a \$40,000 pay rise, ratepayers are entitled to know the rationale behind such largesse. It takes a great leap of faith to accept that Glen Eira does in fact have ‘the best man for the job’ when the water has never been tested, and no other applicant has been provided with the opportunity to apply. If the CEO is the ‘best man for the job’, then calling for applications still leaves the option of reappointment, if he indeed proves to be the ‘best man’. Personally, I believe that no senior management positions should be regarded as a ‘job for life’. The management literature is replete with papers outlining the perils of long term and subsequently, staid senior management.

RECOMMENDATION

- Mandate that all CEO positions be advertised
- Mandate that no CEO be appointed for longer than 2 terms – ie a maximum of 10 years
- Mandate that Key Performance Indicators be published on council’s website
- Mandate that the CEO Performance Appraisal results be published on council’s website

3. LOCAL GOVERNMENT ACT - SECTION 94B – CEO APPOINTMENT OF SENIOR OFFICERS

Contention: The current LGA is silent on CEO decisions on senior officer salaries, or the number of top senior positions (ie ‘directors’ as is the case in Glen Eira) allotted for each council. Given the government’s intention to introduce ‘rate capping’ and statements regarding the excessive salary packages for senior bureaucrats, the LGA should set parameters that councils must meet when appointing senior officers and determining their pay scales.

Rationale: Currently council officers are completely reliant on the CEO for their employment and remuneration packages. Performance assessment is also the exclusive domain of the CEO. Councillors, who are technically the equivalent of a ‘board of management’ with fiduciary duties are denied access to all performance reports, and the setting of wage scales. When organisations whose budgets are in the multi-millions are not required to justify their staffing decisions then there is no transparency nor accountability and no way to determine whether residents are in fact getting ‘value for money’.

In Glen Eira, there have been 5 directors on salaries of over \$230,000 for the past decade. I have compared this over the years with other councils who are generally double or triple the size of Glen Eira and with a greater population. It is indeed curious that these other councils seem to manage without having 5 directors on such a pay scale. All of these officers have also been with council for well over a decade. This in itself, I suggest, is an ‘unhealthy’ situation. When senior officers are reliant for their livelihood on only one individual, then this is a recipe for ‘yes minister’ style of governance. Managerialism, and the separation of power, does nothing except cement that power in the hands of unelected and unaccountable

and often 'anonymous' officers. Councillors, as the elected representatives of the community, should have the right to:

1. View performance reports (denied in Glen Eira)
2. Oversee state regulated wage scales for senior officers
3. Ensure that the quality of work is of the highest order

RECOMMENDATION

- The LGA include a sliding scale for the numbers of senior officers to be employed by councils based on size, population, and recurrent funding of councils.
- That councillors questioning officer performance be granted access to performance reviews
- That senior officers performance criteria and be made public

4. LOCAL GOVERNMENT ACT - SECTION 208D – BEST VALUE: QUALITY & COST STANDARDS

Contention: The discussion paper only refers to the possibility of 'comparative' listings on councils' published 'best value' reports. Currently, what Glen Eira council produces is totally meaningless and does not provide residents with a fair and accurate methodology to evaluate performance and whether or not ratepayers are receiving value for money. The legislation must be amended to ensure that indicators, objectives, and outcomes are quantifiable, correlated and meaningful.

Rationale:

- Within the 2014/15 Best Value Report, 3 different figures are cited for CPI in order to justify price increases – 1.5%, 2% and 3%. No explanation is provided as to why a standardised CPI figure should differ across services. The effect of this variance is that the higher the CPI figure then 'targets' are allegedly met. This is misleading in the extreme.
- Many 'targets' for cost effectiveness are simply stated as "95% of requests actioned in time". No time line is provided and neither is ratepayer satisfaction with the outcome – ie what eventuated as a result of client requests? Was the problem resolved, or did council simply indicate that 'no further action was required'? No data is given on such measures hence impossible to ascertain whether or not the service is in fact 'cost effective'.
- In the Town Planning section of the report one objective states – 'Acceptance of policies by community'. The 'target' is "No more than two per cent of appeals lodged by resident objectors (as a percentage of decisions made)." I submit that there is absolutely no correlation between 'acceptance of policies' and the number of resident objections. This is a meaningless gauge of 'quality and cost' standards since it does not take into account the financial impost on residents appealing decisions that have been passed by council, plus the disillusionment with VCAT in general. Further, council now proudly proclaims that it is refusing applications but VCAT is approving them. Hence the number of objections also needs to include developer objections to accurately ascertain how well the community (which may include resident developers) accepts council's policies.
- Council states that 88% of new dwellings go into 'housing diversity'. The number cited in the Annual Report is 72%. Since the Annual Report is supposed to include the Best Value Reports, then why this discrepancy?

- Most concerning is the continual 'shifting of the goal posts' in regards to targets. This can only be a deliberate ploy in order to present an image of council meeting its set targets and therefore being a success. However, when these targets are consistently reduced, and without alerting the public, then the results are both bogus and deliberately misleading. Examples are – Food Safety Management target in 2010 was 370 food samples. In 2014/15 the target became 187 samples; Social Support Hours in 2010 included the target of 30,600 hours. In 2014/15 this target dropped to 23,000 hours. There are numerous other such examples throughout the reports – all designed to present an image that is far from accurate. This leads to a complete misrepresentation of 'continuous improvement' and I maintain makes a mockery of public accountability and how well ratepayers' funds are used.

RECOMMENDATION

- The LGA should mandate specific 'targets' for the main services provided by councils so that there is uniformity across all councils. This is essential for comparison and ascertaining 'value for money'
- The LGA should mandate that any changes to the above be highlighted by councils

5. LOCAL GOVERNMENT ACT - SECTION 98 – DELEGATIONS

Contention: In the area of planning applications, the vast majority of decisions are made under delegation – in Glen Eira, well over 90%. The current LGA is silent on how delegations should be constituted and how such delegates report back to council and the public. The LGA should therefore be amended to ensure consistency across all councils and incorporate prescriptive measures to facilitate full transparency and accountability.

Rationale: Planning is the area of greatest dissatisfaction recorded by residents of most councils. When vital decisions are made then the justifications for those decisions should be placed in the public domain. The following comments obviously overlap with the Planning & Environment Act, however, I believe that they can also be attended to via amendments to the LGA. The following are my major concerns with the manner that planning decisions are made in Glen Eira –

- There is no full record of which decisions are made by Council, by delegates, or by managers in Glen Eira. Countless other councils table monthly updates of every single decision including: who made the decision, what the decision was, the purpose of the application and the applicants name. In Glen Eira, the only (minimalist) reporting is for those cases which go to VCAT.
- Delegated power in Glen Eira does not provide for 'councillor call-in' on individual applications. Countless other councils cede this function as of right to their elected representatives.
- There is no uniformity across the 'standards' that govern planning applications and when these will be decided by council resolution. Some councils determine that there should be 1 objection; others 5 and others still, various numbers. Again, I question why there cannot be one single scale – especially since the imminent gazetting of the Objector's Bill, which clearly specifies that resident objections deserve both VCAT and council consideration. In Glen Eira, the situation is even more open to subjective judgement when the delegated decision making is framed around such language as 'reasonable number of objections'. "Reasonable" is not defined or enumerated and is dependent on what officers determine as 'reasonable'.
- Again, there are major differences between councils in their online planning register and the information contained therein. In Glen Eira locating all information for one specific site becomes a

herculean task since the information is scattered throughout the register and an individual search has to be undertaken for each application. Nor does the user know who made the resulting decision (ie council resolution; delegated planning committee, or VCAT). With current technology it should be quite feasible that all information pertaining to one single address be included for each entry. Again, other councils are able to achieve this. Consistency across all councils is thus imperative.

- When planning applications are decided under delegation, then either minutes, or a public summary be made public outlining the rationale behind the subsequent decision. No minutes of delegated planning committee meetings are available to the public.

RECOMMENDATIONS

- Mandate that online planning registers contain collated information for each site
- Mandate that there be uniformity across all councils in the pre-requisites for council resolution on planning applications according to the number of objectors
- Decision making by delegation outlining the reasoning behind each decision be made public

SOME GENERAL COMMENTS ON GOVERNANCE AT GLEN EIRA

Since the formation of the Glen Eira Council in 1995, it has been mired in controversy. At least 3 Municipal Inspector's investigations, plus numerous ombudsman's investigations. The latest ombudsman's report places Glen Eira as having one of the highest numbers of registered complaints. Countless millions of ratepayers money has been spent on legal action and advice, threat and counter threat all resulting in the continued erosion of public accountability and good governance.

In the past two years alone, residents have been treated abysmally in that:

- The introduction of the new zones was done in secret and by stealth in August 2013. Documents obtained under FOI from the department make it absolutely clear that certain councillors and the CEO were in secret negotiations with Matthew Guy and the department to implement the zones without the need for a council resolution. When all other councils either conducted public consultations, or at least tabled their intent to proceed under Section 20(4) of the Planning & Environment Act, Glen Eira resorted to secrecy and stealth.
- The subsequent justifications provided by council and still maintained are that the introduction of the zones represented a 'neutral translation'. Nothing could be further from the truth. In fact Amendment C25 which was the starting point for the carving up of the municipality into housing diversity and minimal change areas was seen by the Planning Panel at the time as 'interim'. The onus was put on council to implement further strategic planning. None of this has been done.
- I find it unconscionable that when council promises its population that it will introduce various policies to support its strategic planning agenda, and none of these promises have been carried out in the space of 12 years, then residents have been duped and ignored. The onus is therefore on state legislation to ensure the when a planning scheme includes 'further strategic work' that is to be done, that this in fact is done. In Glen Eira promises have lain untouched for 13 years. This makes a mockery of strategic planning and council's planning scheme.

CONCLUSION

There is much amiss in Glen Eira which makes me, and countless other residents, feel entirely disenfranchised. Amending the LGA can address some of these concerns. There is absolutely no excuse why ratepayers in Glen Eira should be treated differently to residents residing in other municipalities when good governance is the issue. If councils such as Glen Eira abuse the spirit of the law, then I maintain that they must be brought into line via prescriptive amendment of the LGA. Further, when ratepayers are merely regarded as 'cash cows' then again, there should be limits set within the LGA to demand more accountability and transparency. As the legislation stands at the moment, this is not happening.

I request that this submission be published.