

Introduction

I am making this submission in my personal capacity. The views expressed herein are mine and do not necessarily reflect the views of my employer, Burnie City Council or any of its councillors.

This submission responds to terms of reference 1 – 3 of the Local Government Board Review – The Future of Local Government in Tasmania, being:

1. the future roles and functions that should be delivered by local government in Tasmania;
2. the organisational features and capabilities necessary to enable local government to effectively and sustainably deliver its future roles and functions;
3. the optimal future design for the Tasmanian local government sector to support the delivery of local government's proposed roles, functions, features and capabilities, individually and collectively, across representative and administrative roles and functions.

I have the benefit of having seen the submissions from Devonport City Council and Launceston City Council and adopt and support the thrust of both submissions with respect to the arguments advanced that:

- the functions of local government will continue to evolve over time, but the direction of evolution is toward more responsibilities in an operating environment of greater complexity and challenges
- for major regional centres like Launceston, Devonport and Burnie the current local government boundaries create a range of sub-optimal outcomes, particularly in relation to strategic planning (including land-use planning) and the impact of spill-over effect/cost equity
- Councils, including all those in the North-West Region, are capacity and capability constrained as a direct result of current scale and that re-organising at a regional (or sub-regional) level will assist to build and improve both
- re-organisation is not and should not be about cost savings, but rather an opportunity to create sustainable and capable entities to meet the current and evolving functions of the local government sector

I will now make my own observations about these and other issues relevant to the terms of reference.

1. The future roles and function that should be delivered by local government in Tasmania

The *History of Local Government in Tasmania* prepared by the Tasmanian Policy Exchange sets out in clear and well researched detail the development of local government in Tasmania. From its organic beginnings, local government is now a creature of the State, legally created and authorised by State legislation, particularly the *Local Government Act 1993* (the Act).

The Act sets out the functions of a council at section 20 (1), in very broad terms. This is and will continue to be appropriate, as any attempt to define further the functions of councils is only likely to quickly become dated and in need of review. A Council must be able to adapt to the changing circumstances and needs of its community and greater prescription of functions is likely to impede such flexibility.

The Review Board has identified seven themes based on the services currently delivered by local government in Tasmania. It is likely that Councils will continue delivering most, if not all, of these services into the future, however the mix, size, complexity and range of services will vary amongst Councils, in response to local community needs. It is also certain that the service mix will need to continue to evolve and probably increase, in response to changing circumstances. For example, climate mitigation is likely to be an issue of increasing demand and complexity for services provided by local government, including in land use planning, infrastructure protection and provision and social services e.g. protecting our communities in heatwave events.

Equally, requirement for emergency management services is likely to increase and become more complex, in responding to extreme weather events and periodically in leading community recovery from such events.

The Review Board has identified Governance, Accountability and Representation as one of the seven themes, which undoubtedly will continue to be required into the future. However, this is one area that needs considerable attention directed toward ensuring sustainable and appropriate future arrangements.

Councils are complex service organisations and will continue to be so. If the Review Board accepts that Councils should organise at greater scale to improve strategic outcomes and service delivery and to build improved organisational capability and capacity, then governance standards must be raised to ensure Council organisations deliver these requirements in a complex and changing environment.

Currently some Councils are better governed than others, largely because of variable governance capability and the poor conduct of some councillors. My experience is that there are many capable, motivated and well behaved councillors, but it only takes one councillor who either doesn't understand their role and/or how to behave to significantly disrupt the effective governance function of a Council. The Review is an opportunity to address these capability and behavioural issues.

The *History of Local Government* paper sets out the importance of the 'local' in local government, particularly with respect to the representative role of councillors. Section 20(1)(b) of the Act provides that a function of Council is to '... represent and promote the interests of the community' and section 28(1)(a) provides that the function of individual councillors is to '...represent the community'. The representational role as expressed can be read in one of two ways. The first is to see the function as representing individual rate payers (individual representation) and the second is to see the function as representing the community as a whole (collective representation).

The proper discharge of this function probably requires a mix of both, however there is tension between individual and collective representation that can cause significant confusion for councillors about how best to discharge their role and which can also be a source of conflict between

councillors. Too much individual representation is inimical to good governance, but may be good for a councillor's electoral prospects.

It is currently a legal fact that Council organisations have corporate form (see section 19 of the Act). Councillors' functions are analogous with those of 'directors' of a corporation and when acting collectively as Council, effectively as a corporate 'Board'. It is strongly advocated that analogous directors' duties under the Corporation Laws are applied to councillors and Council, including the legal duty to act in the best interests of the community (shareholders) and corporation. It is suggested that this should be the primary legal duty of Council and councillors and that while continuing to have a representative role as elected officials, the legal position reinforces the primacy of the collective as opposed to individual nature of the representative function.

To continue the analogy, directors regardless of how or by whom they are appointed, must act in the best interests of the corporation. It is not unusual for major shareholders to have the power to appoint directors, but once appointed the duty of that director is to the corporation and its shareholders collectively. Councillors are 'appointed' by rate payers through elections. Once elected the clear primary legal duty should be to the corporation and community as a whole.

Equally, other directors' duties should apply, recognising the fiduciary nature of the role and the duty to exercise due diligence. For example, it is not unknown for it to become obvious during Council meetings that some councillors have not read meeting papers. Many listed company boards now have software that monitors directors' access to board papers, such has become the criticality of being able to prove what advice was provided and considered by directors in discharging governance duties. Given the importance of the services provided by local government it is increasingly reasonable and in fact necessary to apply similar standards.

In association with imposing legal duties, the Review Board should also recommend means to ensure that councillors who do not possess the necessary knowledge, experience and skills to discharge the legal duties of good governance are provided with the means (and requirement) to develop same. Equally, as for directors, councillors who do not meet those standards or demonstrate that they are unfit for office, should be subject to disqualification and/or disbarment. The Review Board should also recommend means by which the State Government ensures effective oversight of the sector, particularly with respect to governance.

To reinforce this point, currently Launceston City Council has an annual operating budget of approximately \$115M, FTE of 460 and an asset base of nearly \$2 billion to serve its community of nearly 69,000 people and a broader region of approximately 150,000 people. It is already a big and complex service delivery organisation. The arguments presented to increase its scale are compelling as is the argument that local government governance has to professionalise and advance if the sector as a whole is to meet the challenges ahead.

While this next point can be criticised as circular, the requirement to improve the standard of governance in local government, is another reason to increase the scale of local government areas, so that there is a larger pool of prospective capable councillors to draw upon.

I appreciate that in expressing these views there is tension with the historic local and representative nature of the role of councillor. Many in our communities appear to remain committed to the 'local' in local government, with a view that smaller is better. While I appreciate that sentiment, the reality

is that local government has evolved to the point where this traditional view is holding the sector back. If local government is to continue to advance and develop, as it has done over its long history, the time has come to move to a more sustainable model with higher governance standards.

In recommending this, I do not suggest that community engagement and consultation should be downgraded. It is vitally important that Councils engage with and consult their community. Continuing to see this engagement as being primarily through councillor 'representation' is misguided as there are now many other means by which Councils can and should ensure deep engagement with and understanding of, its community.

2. The organisational features and capabilities necessary to enable local government to effectively and sustainably deliver its future roles and functions

There is a saying about organisation design that form follows function. The organisation features and capabilities required by a council should follow and reflect the functions it is required to discharge. To that end, Councils need core capabilities to service core functions but will also need the flexibility to develop new capabilities to serve new and/or evolving functions. For example, climate mitigation is likely to require new knowledge, skills and experience. Digital transformation will continue to challenge councils but also provides tremendous opportunities for service improvements.

The core issues with respect to this term of reference relates to capacity, capability and sustainability. Currently there are many Councils in Tasmania that struggle to meet their remit because they simply are not large enough to be able to resource all they are responsible for delivering, or they deliver to a low or minimal standard because of these constraints. As referred to in the Launceston and Devonport City Council submissions, workforce issues impact all councils. Councils tend to recruit staff from each other and all are currently facing increasing challenges to recruit in some particular sectors, e.g. environmental health officers, qualified engineers.

Greater scale does not necessarily solve all these issues, but it does facilitate the development of greater organisation capacity and capability, such that these issue can be more easily managed and 'key person' dependencies can be eliminated.

In considering this term of reference, in addition to greater scale; that is larger local government areas to enable more capable local government organisations, scope remains for further aggregation of some services. For example, a regional pool of planning officers could provide services to a number of Councils and waste management may be better serviced on a regional basis. These options should not be discounted, however I hasten to urge caution about seeing 'shared services' generally as an alternative to sensible evidence based re-organising to achieve greater scale.

I have significant experience over a long public sector career in Commonwealth, State and local government with shared services and my experience is that it is incredibly difficult to achieve effective shared services, unless there is a very clear, compelling and objective rationale and strong external drive. While I do not discount the potential for some 'shared service' models, if increasing shared services is the major thrust of local government reform in Tasmanina, then it is doomed to fail.

In re-organising, sustainability is the other key consideration. By that I mean ensuring that however local government areas are redefined there is a sufficient rate base to support a viable organisation to provide an equitable range of services across that area. Throughout this submission I have deliberately avoided using the term amalgamation, because I think it has come to be used as a pejorative and as code for 'takeover' – with winners and losers.

The reality is that some Councils are barely viable because of their current size. Simply amalgamating a number of non-viable councils will not make the larger entity viable. Rather any change of local government boundaries needs to consider a range of factors to ensure sustainability.

For example, Devonport City Council is advocating for a Mersey Region approach. I make no comment about the legitimacy of a 'Mersey Region', but it seems to me that such an approach will provide the scale and rate base sufficient for a more capable organisation to be developed to ensure equitable delivery of local government services to that area. That said, I am sure a different boundary configuration could achieve a similar result and it is important to consider how communities identify and understand themselves in designing new local government areas.

What I do know however, is that strategy (and reform) most often fails on execution because there is not the capability or capacity to deliver it. Any recommendations for reform of local government will fail on implementation unless the strategic direction is matched by corresponding capacity and capability.

There is a difficult balance to be struck here in determining any reconfigurations and for that reason I have avoided recommending a particular re-configuration involving Burnie, however tempting that might be in light of Devonport's claim to a Mersey Region. Having split Central Coast in half immediately begs the question about what happens to its western half. The logical conclusion is that it joins with Burnie, however very careful consideration remains to be given to how the west and north-west parts of the State might be re-organised to meet the core requirements of sustainability and capability and capacity development required to enable reform and provide for more equitable service delivery across new local government areas.

3. the optimal future design for the Tasmanian local government sector to support the delivery of local government's proposed roles, functions, features and capabilities, individually and collectively, across representative and administrative roles and functions.

If the Review Board accepts the arguments to raise governance standards, then it should also consider the number of councillors per Council and remuneration.

In relation to the number of councillors on Council, there is no perfect size for any 'board' and optimal board size is influenced by many factors including:

- Size and complexity of the organisation and its business/ operations
- The diversity of the business lines of the organisation (geographic and functional)
- Cultural norms within the industry in which the organisation operates (for example, university boards tend to be larger).

The ASX Corporate Governance Council's Corporate Governance Principles and Recommendations 3e (2014) provides the following practical guidance in relation to the size of a board:

“The board should be of sufficient size so that requirements of the business can be met and changes to the composition of the board and its committees can be managed without undue disruption. However, it should not be so large as to be unwieldy.”

The current formula that determines the number of councillors by reference to size of community in the local government area should be reviewed to ensure the right balance and in particular that however local government areas are re-organised, the respective Council is not so large that it is ‘unwieldy’. Increasing the size of local government areas should not ipso facto, lead to an increase in the number of councillors. In any event, I counsel against any further increase in councillor numbers beyond the current maximum and in fact there are arguments for slightly lower numbers e.g. maximum size of 9-10 councillors per Council, regardless of how large the population served.

It is also necessary to re-consider remuneration. If governance standards are to raise, then remuneration should also be raised to reflect the requirement to meet the same legal duties as a director, including continuing professional development requirements. That said, the role of councillor should continue to be a part-time function, as full-time councillors will not be fully engaged and some may be inclined to stray into operational areas.

In relation to building capacity and capability in Council organisations, the current arrangements are appropriate, with Council employing and managing the performance of the CEO/General Manager and the Act then empowering the CEO/General Manager to employ and manage staff, reflecting arrangements in corporations. The legal separation between the governance roles and operational functions should be maintained, again consistent with corporate law and practice.

The current Act ‘requires’ the development of a range of strategies and plans, driven by a 10+ year strategic plan for the local government area. The reality is that adherence to these legislative requirements across Tasmanian Councils is uneven. The Review Board should consider how best to strengthen the obligations on Councils to produce and more importantly to implement long term-strategy and plans.

Professionalising governance requirements and developing greater organisational capacity and capability should assist in producing better strategy and in implementing that strategy, but this is a requirement that should be emphasised and improved in these reforms. It probably involves the State Government in playing a stronger role in ensuring all Councils develop and implement the range of strategies and plans required in legislation.

My final observation relates to encouraging and continuing attempts to be able to meaningfully compare and benchmark performance across Councils. This requires further attention to developing consistently applied and measured data sets that enable such comparisons.

Conclusion

This Review provides an important opportunity to continue the evolution of Local Government in Tasmania. I believe the strategic choice to move up, that is to improve and strengthen governance and increase scale to develop better capacity and capability is the only viable option. Retreating to smaller scale or remaining as currently configured will not position the local government sector to meet the future needs of Tasmanian communities.

Any change is difficult to navigate and the history and challenges of reform of this sector in Tasmania is again well documented in the *History of Local Government*. I commend the Review Board for its approach; the challenge is to lay out a compelling case for change and to provide evidence based, well researched and grounded recommendations for reform.

I hope this submission can in some small way aid your important deliberations.

Yours sincerely,

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