

# DEVELOPMENT OF NEW LOCAL GOVERNMENT ACT

## Greens NSW Submission

15 March 2016

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By email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

Thank you for this opportunity to make a submission in response to the proposed amendments to the Local Government Act.

The Greens welcome the opportunity to consult on the development of a new Local Government Act though note our concern at a number of key reforms that appear to be missing from the schedule of proposed amendments such as:

- Fixing the fundamental funding issues facing local government including:
  - i) Ending rate capping;
  - ii) Ending cost shifting;
  - iii) Fixing the dysfunctional allocation of Federal Assistance Grants;
  - iv) Ensuring state forest that is used for logging is rateable land to compensate councils for local costs;
  - v) Ensuring large private schools are rateable land and;
  - vi) Resolving the unfairness in rating on unimproved value of land, especially concerning high end luxury units.
- A reform to ban real estate agents and property developers from sitting on council to put an end to the obvious and inherent conflict of interest;
- Reforms to prevent property developers from donating to councillors, including a cap on the amount of money that councillors can receive;
- Reforms to change the structure and culture of local government to deliver greater diversity in local government and increasing the number of councillors who are Aboriginal, younger people, women and those from culturally and linguistically diverse backgrounds
- A proposal to work with the Commonwealth Government to ensure the Constitutional Recognition of Local Government;
- A requirement for all Development Applications to be assessed in consultation with the local Aboriginal community to empower Aboriginal Sovereignty and inherent Aboriginal Land Rights
- Defined functions and powers within the Local Government Act that reflect Aboriginal Sovereignty, and
- A requirement for all council meetings to begin with an Acknowledgement of Country
- A statutory process to facilitate local treaties between LGA's and local Aboriginal people to deliver on the promise of reconciliation.

The further substance of our submission responds to the Survey questions published on the Office of Local Government website.

Should you wish to discuss any of these matters further, please don't hesitate to contact my office on (02) 9230 3030 or [david.shoebridge@parliament.nsw.gov.au](mailto:david.shoebridge@parliament.nsw.gov.au)

Regards,



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Greens NSW MP  
Spokesperson for Local Government

### **1.1 Do you support the proposed amendment regarding the *purposes of the Local Government Act*?**

Our primary concern with the proposed changes to the purpose of the Local Government Act is that it seeks to take the environment out of the Act by removing the requirement for councils to be “environmentally responsible” or have “regard to the principles of ecologically sustainable development.”

ESD is a well-established concept that includes the precautionary principle, intergenerational equity and the conservation of biological diversity and ecological integrity. Rejecting this principle would undoubtedly lead to a degradation of environmental protections.

The role and responsibilities of local councils has also been ambiguously redefined to remove reference to the “effective participation of local communities” and instead replaced with principles of “sustainability” and “value for money.”

The Greens are concerned that refocusing the purpose of Local Government away from community participation and towards financial efficiencies would mean that decisions are not made in the interests of social, cultural and environmental outcomes but purely to maximise financial efficiencies.

### **1.2 Do you support the proposed amendment regarding the *role of local government*?**

The proposal seeks to severely reduce the defined role of local government to remove references to important principles such as ecologically sustainable development, multiculturalism, social justice, equity, active community consultation and the proactive release of information. It is not supported.

### **1.3 Do you support the proposed amendment regarding the *guiding principles of local government*?**

As outlined in our response to Question 1.2 the Greens have serious concerns that replacing the existing charter will see crucial principles and concepts lost. The current Act has an obligation to ensure that the existing charter specifically includes principles such as ecologically sustainable development, multiculturalism, social justice, equity, active community consultation and the proactive release of information.

## **Section 2 - Structural Framework of local government**

### **2.1 Do you support the proposed amendment regarding the *role of the governing body*?**

The Greens do not oppose the proposed amendment though do note concerns that limiting the role of councillors to those listed coupled with an increase in mayoral powers could see power centralised in the hands of Mayors.

We should be strengthening the authority and responsibility of councils as collective decision making bodies, with a primary focus on the accountability of councillors to their communities and the primacy of community involvement.

## **2.2 Do you support the proposed amendment regarding the *number of councillors*?**

The Greens do not oppose the proposed amendment to require councils being comprised of an odd number of councillors. However in large councils such as Blacktown (with more than 300,000 residents) the maximum number of councillors should be lifted above 15.

## **2.3 Do you support the proposed amendment regarding *rural councils*?**

Local government is a crucial voice for local communities, particularly in rural and regional areas . The Greens do not support proposals that seek to diminish democratic provisions and increase executive power for the purpose of “efficiencies and savings.” Removing the requirement for a constitutional referendum to be held in cases of reducing councillor numbers and abolishing wards would circumvent requirements for open and transparent decision making.

The Greens do not support any proposal to allow for wards of less than three councillors. Electing any less than three candidates per ward results in councils that poorly reflect the composition of the community they represent and invariably results in party-political domination on councils. Botany Bay Council is a prime example of this, where two member wards and exhaustive preferential voting for many years ensured that one party won both vacancies. It has not ended well there.

We do not support reducing the minimum number of council meetings per year as this would only reduce access to local democracy and decision-making. We also have concerns that reducing the number of council meetings would lead to an increase in informal meetings as a means of circumventing open and transparent decision making. This proposal diminishes the importance of local government in rural Australia and should not proceed.

## **Section 3 - The governing body of councils**

### **3.1 Do you support the proposed amendment regarding the role of the mayor?**

The Greens do not oppose elements of the proposal to expand the prescribed responsibilities of Mayors but believe that increased any increase in Mayoral powers must come with increased accountability measures. We do not support allowing the Mayor to set ad hoc policy between meetings, nor the proposed power to “manage” the GM. The GM should instead be more effectively oversighted by a functioning council or a representative sub-committee of councillors.

There is an understandable necessity to clarify the role of mayors but the answer is not to centralise power in the hands of the mayor. The Greens believe that rather than strengthening the authority and responsibility of mayors, we should be strengthening the authority and responsibility of councils as collective decision making bodies who represent their local community.

### **3.2 Do you support the proposed amendment regarding the *mayor's term of office*?**

The Greens support an amendment allowing mayors to be elected for a 2 year term, which was Recommendation 14 of the Parliamentary Inquiry into Local Government. The Greens agree with the report's finding that:

*"One year is too short for council elected mayors to be in office. Longer terms for elected mayors will mean improved stability and stakeholder relationships within local councils, thereby improving the delivery of services to the community."*

We do not however support electing mayors for up to 4 years. If a mayor loses the confidence of a majority of councillors in that time this will produce a very dysfunctional council.

### **3.3 Do you support the proposed amendment regarding the *role of councillors*?**

The Greens have concerns that this amendment, when coupled with the expanded role of Mayors, would diminish the role and power of councillors. The proposed amendment substantially reduced councillors role and we do not support removing the responsibility to "play a key role in the creation and review of council's policies" or reference to providing "leadership and guidance to the community."

The proposed provision that requires councillors to "uphold and represent accurately the policies and decisions of the governing body" is also of concern as it could be used to restrict a councillors' ability to publicly dissent, something that is key to the democratic process and community representation.

In short, these changes are not supported.

### **3.4 Do you support the proposed amendment regarding *councillors' terms of office*?**

The Greens do not oppose an amendment that has a councillor's position become vacant if they are elected as a popularly elected mayor.

### **3.5 Do you support the proposed amendment regarding *an oath or affirmation of office*?**

The Greens are not opposed to requiring Councillors and Mayors to take an oath or affirmation of office, though consideration should be given to the form of words taken.

### **3.6 Do you support the proposed amendment regarding *councillors' expenses and facilities*?**

The Greens do not support this amendment which seeks to weaken current accountability measures relating to councillors' expenses and facilities. The public has a right to free and ready access to public interest information that is held by council, and ratepayers in particular deserve transparent governance particularly when it comes to the expenditure of public funds.

The notion that mandatory disclosure is a "burden" on councils is offensive to the principle that local councils have a requirement to be accountable to their local community. The background to the proposed amendment notes that access obligations apply under the Government Information (Public Access) Act 2009 but residents and ratepayers should not be required to make a formal access application for to obtain this information.

A better solution than annual reporting would be continuous online disclosure of the expenses policy and the expenses themselves.

### **3.7 Do you support the proposed amendment regarding *mayor/councillor professional development*?**

The Greens support mandatory, ongoing professional development to ensure that councillors build new skills and knowledge relevant to their role as a councillor and local community. Ongoing professional development is essential to ensuring that councillors understand their rights and responsibilities under the Act, their fiduciary duty, governance, how to respond and represent their community and the intricacies of correct formal meeting procedure including notices of motion, amendments and committee meetings.

It is also important that councillors have a defined role in setting the agenda for professional development programmes. It would be useful, especially for smaller councils, for the OLG to produce a model induction program that can be readily adopted and amended as needed.

### **3.8 Do you support the proposed amendment regarding *the role and functions of administrators?***

The Green do not oppose the proposed amendment to clarify the role and functions of administrators, provided that any process by which councils are dismissed, powers are removed and administrators are appointed is open, fair and independent.

We do have some concerns about the intentions behind this proposed amendment given that the by the current Government has threatened to sack and appoint administrators in local councils that are opposed to proposed forced amalgamations. Where there are multiple administrators a clear statement that in cases of disagreement the majority will prevail would be appropriate.

### **3.9 Do you support the proposed amendment regarding *financial controllers?***

The current performance improvement regime has not been sufficiently tested to support this reform.

### **3.10 Do you support the proposed amendment regarding *meetings?***

The Greens support having strong Code of Meeting Practice provisions to ensure that council meetings are run in a functional, transparent and democratic fashion.

The Greens are not convinced that this amendment is necessary as no deficiencies have been detected in the current model.

### **3.11 Do you support the proposed amendment regarding the *delegation of functions?***

We do not support the proposed amendment which would allow Council to delegate its authority to the General Manager to accept tenders or make key financial decisions. General Managers are not democratically elected and as such not democratically accountable to residents and ratepayers in the same way as councillors.

Coupled with increased mayoral powers, we have concerns that this would centralise power in the executive.

## **Section 4 - The governing body of councils**

### **4.1 Do you support the proposed amendment regarding the extension of the option of universal postal voting to all councils?**

The Greens do not support this amendment which would fundamentally alter the way that local council elections are elected. Postal voting is a method that favours highly financed political parties, hindering candidates that rely on community supporters handing out leaflets on election day due to not being

able to afford expensive mail-outs. It would also disadvantage younger, disadvantaged and more transient voters.

The Greens support optional postal voting as a means of ensuring greater voter turnout in local government elections but believe that exclusive postal voting delivers the exact opposite.

## **Section 5 - Councils' workforce**

### **5.1 Do you support the proposed amendment regarding the determination of the organisation structure?**

This proposal seeks to expand the statutory role and powers of General Managers.

General Managers are not elected representatives and as such are not accountable to residents and ratepayers in the same way as elected councillors. To this end we do not support expanding the power of General Managers at the expense of council's own ability to determine the LGA's organisational structure.

### **5.2 Do you support the proposed amendment regarding the role of general managers?**

The Greens support clarifying the role of General Managers, but as foreshadowed above we do not support giving General Managers additional powers over councils' organisational structure given that they are not democratically accountable in the same way as councillors.

The role of General Managers should have a strong predisposition towards fostering a consultative approach to, and relationship with, the elected councillors. We believe that the current granting of all "day to day" decision making to the general manager gives excessive power to this official.

Current statutory arrangements already confer excessive powers to the General Manager, at the expense of elected councillors. We would support amending the statutory arrangements to make General Managers more accountable to elected councillors, and thus the local community they represent.

The Greens believe that local communities have the right to control their local affairs through elected representatives, not unelected bureaucrats.

There should also be an express requirement on the GM to provide equal, non-partisan and comprehensive advice and information to all elected councillors.

### **5.3 Do you support the proposed amendment regarding the requirement to report annually to the council on senior staff contractual conditions?**

Rather than being removed this provision should be expanded to include performance review provisions by council of all senior staff. This should be done on a similar basis to review of the GM, but include participation by the GM.

## **Section 6 - Ethical standards**

### **6.1 Do you support the proposed amendment regarding the consolidation of the prescription of ethical standards?**

The Greens do not oppose this amendment and believe that the Local Government Act could be even further strengthened to ban real estate agents and property developers from sitting on council. This would put an end to the obvious and inherent conflict of interest of councillors having the opportunity to vote on planning matters where they have a pecuniary interest.

**6.2 Do you support the proposed amendment regarding the investigation of pecuniary interest breaches?**

No. Pecuniary interest breaches are of a higher level of concern for most residents and as such should be dealt with in a separate and strict manner.

If ever there is a conflict of interest, it is in having developers and real estate agents on a council who are making key planning decisions where they have an obvious and direct pecuniary interest.

**Section 7 - Councils' strategic framework**

**7.1 Do you support the proposed amendment regarding integrated planning and reporting principles?**

The Greens are generally supportive of these overarching principles, in particular the inclusion to "be transparent and accountable for decisions and omissions" and "foster community participation to better inform local and state decision-making."

We note though that without seeing this amendment in draft legislative language it is difficult to comment on how these principles would be enacted.

**7.2 Do you support the proposed amendment regarding streamlining the existing integrated planning and reporting provisions?**

The Greens want to ensure that any amendments to Sections 402-406 of the Local Government continues to require plans and reports to address civic leadership, social, environmental and economic issues in an integrated manner and are to be based on social justice principles of equity, access, participation and rights.

The Greens note concern that moving these provisions to the Regulation would allow the executive to determine the content and scope of these plans and reports in an undemocratic process.

**7.3 Do you support the proposed amendment regarding councils' integrated planning and reporting to reflect regional priorities?**

The Greens do not oppose regional priorities being reflected in individual councils' strategic business planning so long as these priorities are determined democratically by councils, and not set by the executive.

**7.4 Do you support the proposed amendment regarding the expanded scope of delivery programs?**

The Greens support this amendment to include council activities within delivery programs.

**7.5 Do you support the proposed amendment regarding fiscal sustainability?**

The Greens support strong and financially sustainable councils but believe that this should never be at the expense of participatory democracy or ecological sustainability.

The Greens believe that the financial sustainability of local councils can be greatly improved by fixing the local government sector's major funding shortfalls, such as billion dollar infrastructure backlogs, as well as increasing council's financial autonomy by putting an end to cost shifting, rate pegging and the dysfunctional allocation of Commonwealth Financial Assistance Grants. These were all recommendations of the NSW Parliamentary Inquiry into Local Government.

### **7.6 Do you support the proposed amendment regarding the expanded scope of councils' community engagement strategies?**

The Greens agree in principle to expanding the scope of councils' community engagement strategies, we believe there is scope for a greater role for community consultation within local government.

Community consultation can be improved by making consultation mandatory in relation to the following local government issues: planning instruments, development applications, rezoning, budget prioritisation and the sale or lease of public land.

## **Section 8 - Council Performance**

### **8.1 Do you support the proposed amendment regarding annual reports?**

The Greens do not oppose this amendment, provided that any such committee is genuinely independent and acts in a transparent, accountable and democratic manner and the audit function is limited to financial and similar objectively identifiable information.

We do have some concerns about the intention of such an amendment given that the Government has previously provided misinformation about councils' performances in an attempt to force amalgamations.

### **8.2 Do you support the proposed amendment regarding state of the environment reports?**

The Greens do not support this amendment which appears to be a further effort to remove the environment as a principal consideration of local councils. The Greens are particularly concerned that this amendment, coupled with removing the requirement for councils to be "environmentally responsible" or have "regard to the principles of ecologically sustainable development," would see the environment come second to notions such as "efficiency."

### **8.3 Do you support the proposed amendment regarding performance measurement?**

The Greens would not support the implementation of a 'tick-a-box' performance measurement framework. Performance measurement and statutory reporting should include indicators and benchmarks that focus on deliverable outcomes and support overarching principles of community involvement in planning, ecologically sustainable development and Aboriginal land rights.

### **8.4 Do you support the proposed amendment regarding internal audit?**

The Greens believe that constant auditing and publishing of council business processes, finances and staff performances add to the transparency necessary for open and accountable government.

### **8.5 Do you support the proposed amendment regarding sector-wide performance audits by the Auditor-General?**



The Greens support the role of the Auditor-General in ensuring fiscal responsibility, accountability and transparency across the local government sector. It is important to note though that sector-wide audit should not be solely focused on economic efficiency but must include an assessment of democratic governance, ecologically sustainable development and involvement with traditional owners.

The Greens also propose that the Auditor General undertake an audit of all planning decisions made by local councils since Section 451 of the Local Government Act was opened up to legalised corruption by the coalition in April 2012. This section allowed councillors to vote on decisions despite having a direct pecuniary interest. This audit is urgently needed to identify where the public interest has been betrayed by that decision-making and propose remedial action.

#### **8.6 Do you support the proposed amendment regarding financial management?**

The Greens do not oppose this amendment so long as financial management is not prioritised over democratic, transparent and participatory-decision making.

The principles informing the 'principles-based' approach should include a primary focus on ecologically sustainable development.

All of these financial oversight and planning mechanisms should be applied to the State Government which has few, if any, of these financial controls.

#### **8.7 Do you support the proposed amendment regarding financial reporting?**

See above.

#### **8.8 Do you support the proposed amendment regarding external audit?**

The Greens do not oppose providing the Auditor General with an expanded role in overseeing local council performance provided the scope of this oversight is not restricted to just financial management, but also seeks to maximise social, cultural and environmental principles.