



New South Wales

IPWEA

INSTITUTE OF PUBLIC WORKS
ENGINEERING AUSTRALASIA



IPWEA (NSW) ROADS & TRANSPORT DIRECTORATE

IPWEA (NSW Division)
L12, 447 Kent St
Sydney NSW 2000
Tel 02 8267 3001

15 November 2019

Office of Local Government
IPART – Local Government Compliance and Enforcement
Locked Bag 3015 Nowra NSW 2541

Email: lgenforcement@olg.nsw.gov.au

Submission on the IPART Review of Local Government Compliance and Enforcement

The IPWEA NSW Roads & Transport Directorate appreciates the invitation to provide this submission to the Office of Local Government. The submission deals with each of the recommendations presented for comment based on a wide range of inputs. We would welcome the opportunity to address the Inquiry to provide further detail on the issues raised within this submission.

Please do not hesitate to contact Mick Savage on tel: 8267 3000 or email mick.savage@ipweansw.org in relation to this submission.

Yours faithfully,



Mr Garry Hemsworth
Director IPWEA NSW Board



Mr Mick Savage
Roads & Transport Directorate Manager

THIS PAGE INTENTIONALLY BLANK

IPART Recommendations on the Review of Local Government Compliance and Enforcement

Submission by

**INSTITUTE OF PUBLIC WORKS ENGINEERING
AUSTRALASIA
(NSW Division) Roads & Transport Directorate**

15 November 2019

Executive Summary

IPWEA NSW appreciates the opportunity to provide input to what would be the NSW Government's response to IPART's set of recommendations that seek to reduce unnecessary costs on businesses and the community that result from local government's compliance and enforcement roles.

IPWEA NSW fully recognises that regulation is a necessary function of all spheres of government and that it is intended to protect and advance the best interests of society/the community. However, all laws and regulations need to be subject to regular review of their relevance, necessity and efficacy. IPWEA NSW strongly supports the key elements of the Terms of Reference for this Inquiry:

- Examine local government compliance and enforcement activity (including regulatory powers delegated under NSW legislation and
- Make recommendations about how to reduce unnecessary regulatory burden for businesses and the community.

The Office of Local Government, as local government's lead state agency should act as the focal point for all councils and assist in managing the timetables for introduction of new legislation and reform programs. We also recommend that implementation be staggered in order to ensure that councils have the capability and necessary resources to facilitate and incorporate the new requirements.

Policy improvements to the regulatory framework within the local government sector, with even minor adjustments, can have far-reaching benefits for councils and the community.

Table of contents

1. Introduction.....	6
2. Background.....	7
3. Response to IPART Recommendations.....	8
4. Conclusion.....	18
5. Contact.....	18

Introduction

The Institute of Public Works Engineering Australasia NSW Division (IPWEA NSW) is the leading professional association representing Engineers and Public Works Officers engaged in public works and engineering, with the majority of members working in, or providing services to, Local Government (and the NSW Government).

IPWEA (NSW) is a charity with the purpose of advancing the public works excellence in Australia, particularly in NSW by:

- conducting and publishing research into improvements to the processes used in public works and services to enhance NSW Communities
- working with government at all levels to ensure that the interests of the community are represented in regard to the public decision-making process relating to public works and services, and
- providing a forum for all people engaged in the public works to discuss best practice and enhancing the future of NSW Communities

IPWEA (NSW) has made it a mission to enhance the quality of life of NSW communities through excellence in public works and services. This is achieved through our professional association that effectively informs, connects, represents and leads public works professionals for NSW.

The Roads and Transport Directorate was established by IPWEA (NSW) in conjunction with Local Government NSW in 2004 to provide support to its members working in local government across the state. It is supported financially by membership contributions from local councils across NSW.

Its main purpose is to assist Local Government in NSW in the area of road infrastructure and transport related activities by:

- Assisting members in discharging their road management roles in the most effective manner consistent with current legal obligations and the most recent technical practices particularly in the critical area of consistent and cost effective asset management;
- Assisting the IPWEA (NSW), Local Government NSW, individual Councils and members in lobbying for a higher priority to be placed on road infrastructure provision and maintenance and for a more equitable share of resources and funding; and
- Providing for IPWEA members and Local Government a powerful technical and research resource on transport issues at regional, state and national level. The activities would be, as circumstances dictate, either proactive or reactive to achieve the optimum benefit for the region or state.

This submission has been prepared by the NSW Roads & Transport Directorate on behalf of the IPWEA NSW Board.

Background

In 2013, The NSW Government engaged IPART to undertake a review of local government compliance and enforcement activity in NSW. This purpose of this review was to fulfil the NSW Government's target of \$750 million in reduced 'red tape' costs for business and the community by June 2015¹. The review, which was completed in 2014 found that councils have 121 regulatory functions that involve 309 separate regulatory roles that come from 67 State Acts which are administered by 31 State agencies.²

IPART, through this review, endeavours to:

- Reduce red tape to businesses and individuals by at least \$177.7 million per year
- Save councils an estimated \$41.9 million per year
- Save the NSW government an estimated \$1.3 million per year
- Provide an estimated \$220 million per year in net benefits to the community of NSW.³

In 2019, The NSW Government released the IPART recommendations and is now presenting interested stakeholders the opportunity to comment on specific recommendations to allow them to respond to the recommendations.

¹ IPART Local Government Compliance and Enforcement – Final Report, October 2014

² Stenning & Associates, Register of regulatory functions undertaken by Local Government in NSW, October 2012, available at: http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Local_Government/Local_Government_Compliance_and_Enforcement accessed on 14 October 2014 (Stenning register). Analysis was based on data available as at 30 June 2012 as cited in IPART Local Government Compliance and Enforcement – Final Report, October 2014

³ Centre for International Economics (CIE), Local Government Compliance and Enforcement -Quantifying the impacts of IPART's recommendations, October 2014 (CIE Report). Dollar figures in the report are presented in 2011/12 real dollars unless stated otherwise as cited in IPART Local Government Compliance and Enforcement – Final Report, October 2014

Response to IPART Recommendations

IPWEA NSW fully recognises that regulation is a necessary function of all spheres of government and that it is intended to protect and advance the best interests of society/the community. However, all laws and regulations need to be subject to regular review of their relevance, necessity and efficacy.

The following are IPWEA NSW's responses to the recommendations presented for comment:

A new partnership between State and local Government

1. Subject to cost benefit analysis, Department of Planning and Environment should engage in a Partnership Model with local government, similar to the Food Regulation Partnership, to enhance the capacity and capability of councils to undertake their regulatory functions. This should include:
 - enshrining the partnership model in legislation;
 - clear delineation of regulatory roles and responsibilities;
 - risk-based approach to regulation supported by a compliance and enforcement policy;
 - use and publication of data to assess and assist performance;
 - dedicated consultation forum for strategic collaboration;
 - ability for councils to recover their efficient regulatory costs;
 - system of periodic review and assessment of the agreement;
 - dedicated local government unit to provide:
 - council hotline to provide support and assistance;
 - password-protected local government online portal;
 - guidelines, advice and protocols;
 - standardised compliance tools (eg, forms and templates); and
 - co-ordinated meetings, workshops and training with councils and other stakeholders.

OLG Comment:

Significant reform has been undertaken in recent years in relation to the NSW planning system, including the introduction of comprehensive amendments to the Environmental Planning and Assessment Act 1979 (EP&A Act) in 2018. A review of the EP&A Regulation is also currently underway. You may wish to visit DPE's policy and legislation website for further information about these reforms before making a submission on this Recommendation.

Supported.

IPWEA NSW supports the idea of developing a partnership model between the Department of Planning and local government. This partnership is a step towards improving and encouraging effective state and local government interaction and coordination particularly in regulatory areas. However, it must be ensured that the parties involved in the partnership are considered equals. The partnership model should clearly

delineate regulatory roles and responsibilities of state and local government to remove any delays, confusion, inconsistencies and duplication which could arise from lack of coordination.

2. Subject to cost benefit analysis, the NSW Environment Protection Authority should engage in a Partnership Model with local government, similar to the Food Regulation Partnership (as per Recommendation 1)

Supported.

IPWEA NSW supports this proposal as stated in the first recommendation.

3. State agencies administering legislation with regulatory responsibilities for local government, such as the NSW Ministry of Health, NSW Office of Liquor, Gaming and Racing, Office of Local Government, and Roads and Maritime Services, should adopt relevant elements of the Partnership Model suggested in Recommendation 1.

Supported.

IPWEA NSW supports this proposal as stated in the first recommendation.

4. The Department of Premier and Cabinet should revise the NSW Guide to Better Regulation (November 2009) to include requirements for developing regulations involving regulatory or other responsibilities for local government, in particular:
 - consideration of whether a regulatory proposal involves responsibilities for local government;
 - clear identification and delineation of State and local government responsibilities;
 - consideration of the costs and benefits of regulatory options on local government;
 - assessment of the capacity and capability of local government to administer and implement the proposed responsibilities, including consideration of adequate cost recovery mechanisms for local government;
 - collaboration with local government to inform development of the regulatory proposal;
 - if establishing a jointly provided service or function, agreement with local government as to the objectives, design, standards and shared funding arrangements; and
 - development of an implementation and compliance plan.

Supported.

IPWEA NSW supports the proposal to revise the NSW Guide to Better Regulation in an effort to set clear goals and responsibilities for local government, create a standard enforcement policy as well as to ensure a transparent process when establishing fees and charges by both state and local government.

5. *Not for consultation*

6. The NSW Government should maintain the register of local government regulatory functions on the Independent Pricing and Regulatory Tribunal website to:
- manage the volume of regulation delegating regulatory responsibilities to local government; and
 - be used by State agencies in the policy development of regulations to avoid creating duplications or overlaps with new or amended functions or powers.

OLG Comment:

Treasury is currently developing a new regulatory policy guideline, which will include requirements for early engagement with affected stakeholders, and a rigorous analysis of operational burden on Government (including Local Government) in administering regulations.

Supported

IPWEA NSW supports the recommendation to maintain a register of local government regulatory functions. The establishment of a central register of all functions would be beneficial especially when introducing new legislation so as to avoid duplications and overlaps of functions. This register must be regularly checked to make sure it is updated.

7. The Department of Premier and Cabinet should:

- develop a Regulators' Code for local government, similar to the one currently in operation in the UK, to guide local government in undertaking enforcement activities. This should be undertaken in consultation with the NSW Ombudsman and State and local government regulators;
- include local government regulators in the Department of Premier and Cabinet regulators group;
- develop simplified cost benefit analysis guidance material or a resource kit for local government to undertake proportional assessments of the costs and benefits of regulatory actions or policies, including consideration of alternatives; and
- develop simplified guidance for the development of local government policies and statutory instruments, and on risk based compliance.

OLG Comment:

As noted above, Treasury is currently developing a new regulatory policy guideline, which will provide guidance on undertaking proportional assessments of the costs and benefits of regulations, including the cost impact on State and Local Government, consideration of

alternatives, and engagement with all affected stakeholders to inform the development of regulatory policies. In December 2017, the Premier assigned responsibility for the NSW regulatory framework to the Treasurer. This means Treasury is now the lead agency for the whole-of-government regulatory initiatives (instead of DPC).

Partially supported.

The development of a Regulator's Code for local government is not supported. Such a code is deemed unnecessary as roles and responsibilities of regulators as well as functions and procedures should already be specified in relevant acts and regulations. The establishment of another code would in fact go against any efforts to simplify regulatory policy and reduce duplication.

IPWEA NSW supports the inclusion of local government regulators in the DPC regulators group as well as the development of a simplified cost benefit analysis guidance material for local government.

8. Not for consultation

9. The Local Government Act 1993 should be amended to abolish Local Orders Policies (LOPs), as the function of LOPs will be replaced by adoption of the new model enforcement policy.

Supported.

IPWEA NSW supports the abolition of Local Orders Policies (LOPs) and supports the replacement of LOPs with a new model enforcement policy.

10. The NSW Government should publish and distribute guidance material for:
 - councils in setting their regulatory fees and charges (to apply to fees and charges, where councils have discretion); and
 - State agencies in setting councils' regulatory fees and charges.
 - This guidance material should include principles and methodologies for estimating efficient costs, setting fees and charges and reviewing and updating these fees and charges over time. This guidance material should also include ways to address affordability issues through hardship provisions, if required.

Supported.

IPWEA NSW supports the recommendation to publish and distribute guidance material to assist both state and local government in setting their regulatory fees and charges. However, statutory fees should be set on the basis of full cost recovery.

Enhancing regulatory collaboration amongst councils

11. *Not for consultation*

12. *Not for consultation*

Improving the regulatory framework at the local level

13. The Local Government Act 1993 should be reviewed and amended in consultation with councils to:

- remove duplication between approvals under the Local Government Act 1993 and other Acts, including the Environmental Planning and Assessment Act 1979 (EP&A Act) and Roads Act 1993 in terms of:
 - footpath restaurants; installation of amusement devices;
 - installation and operation of manufactured homes; stormwater drainage approvals;
- allow for longer duration and automatic renewal of approvals; and
- provide more standard exemptions or minimum requirements from section 68 approvals, where possible, in areas such as: footpath restaurants; A frames or sandwich boards; skip bins; domestic oil or solid fuel heaters; busking; set up, operation or use of a loudspeaker or sound amplifying device and deliver a public address or hold a religious service or public meeting.

Supported

IPWEA NSW supports the recommendation for the Local Government Act 1993 to be reviewed and amended for the purpose of removing duplications between approvals falling under the LG Act 1993 and other Acts. The removal of duplications would provide clarity for all stakeholders.

14. *Not for consultation*

15. The Local Government Act 1993 should be amended to abolish Local Approvals Policies (LAPs) or, alternatively: reduce the consultation period to 28 days in line with Development Control Plans; remove sunset clauses; require Ministerial approval only for amendments of substance; centralise LAPs in alphabetical order in one location on the Office of Local Government's website; consolidate activities within one LAP per council; and the Office of Local Government to provide a model LAP in consultation with councils.

Supported

IPWEA NSW supports the recommendation to amend the Local Government Act 1993 to either abolish Local Approval Policies (LAPs) or alternatively reduce the consultation period to 28 days in line with Development Control Plans. However, further consideration is warranted with regard to how to maintain consistency and transparency should LAPs be abolished.

16. The NSW Government, as part of its reforms of the Local Government Act 1993 should amend the Act to provide a modern, consolidated, effective suite of compliance and enforcement powers and sanctions for councils and council enforcement officers.

The powers would be applicable to all new State Acts or regulations. This suite should be based on the best of existing provisions in other legislation and developed in consultation with the NSW Ombudsman, Department of Premier and Cabinet, State and local government regulators. This should include effective cost recovery mechanisms to fund enforcement activities.

Supported

IPWEA NSW supports the recommendation to amend the Local Government Act 1993 to provide a modern, consolidated and effective suite of compliance tools as well as the inclusion of effective cost recovery mechanisms.

17. *Not for consultation*

Improving regulatory outcomes

18. *Not for consultation*

Planning

19. The Department of Planning and Environment, in consultation with key stakeholders and on consideration of existing approaches, should:
- identify which development consent conditions may be applied across council areas, including regional groupings of councils, and which conditions will vary across council areas; and
 - then develop (where appropriate) a standardised and consolidated set of development consent conditions for councils to use for different forms of development

Partially Supported

IPWEA NSW supports the approach to identify common development consent conditions applicable across council areas as well as conditions that vary in order to develop a standardised and consolidated set of development conditions for councils to use. However, there must also be flexibility allowing for circumstantial factors that affect each development type and area.

Building and Construction

20. Not for consultation

21. Not for consultation

22. Not for consultation

23. Councils seeking to impose conditions of consent above that of the National Construction Code must conduct a cost benefit analysis justifying the benefits of these additional requirements and seek approval from an independent body, such as the Independent Pricing and Regulatory Tribunal (IPART), under a 'gateway' model.

Not Supported

This recommendation adds additional burden on to councils and limits their ability to impose site specific conditions such as the ability to modify certain standards in special circumstances in order to protect public interest and provide local amenity.

24. Not for consultation

25. Not for consultation

26. The NSW Government (eg, the Department of Planning and Environment) should enable building owners to submit Annual Fire Safety Statements online for access by councils and the Commissioner of the Fire and Rescue Service.

Supported

IPWEA NSW supports this recommendation.

27. Not for consultation

28. Not for consultation

29. Not for consultation

30. The Office of Local Government should:

- develop a 'model' risk-based inspections program to assist councils in developing their own programs under the Swimming Pools Act 1992 (NSW)
- promote and assist councils to use shared services or 'flying squads' for swimming pool inspections, if a backlog becomes apparent under the new regulatory regime
- review the Swimming Pools Act 1992 (NSW) within five years from commencement of the amendments to determine whether the benefits of the legislative changes clearly outweigh the costs
- review councils' regulatory performance and inspection fees prescribed by the Swimming Pools Regulation 2008 (NSW), including whether inspection fees recover councils' efficient costs

OLG Comment:

Responsibility for the Swimming Pools Act 1992 now lies with NSW Fair Trading. However, responsibility for regulation of councils under the Local Government Act 1993, remains with the Office of Local Government. Comment is being sought on this Recommendation as some aspects of this Recommendation must be addressed through OLG

Supported

This recommendation is supported.

31. Not for consultation

32. The Department of Planning and Environment, in consultation with the EPA and other stakeholders, should develop standard waste management requirements for inclusion in the NSW Housing and NSW Industrial and Commercial Codes, which establishes site waste management standards and requirements for:

- exempt and complying development, and
- remove the need for applicants to submit separate Waste Management Plans to councils for complying developments.

Supported

IPWEA NSW supports this recommendation provided that it be done in consultation with councils.

Parking and road transport

33. Councils should either:

- Solely use the State Debt Recovery Office (SDRO) to handle parking fine requests for review or appeals to remove current confusion, duplication, and reduce costs; or

- Adopt the SDRO's guide for handling representations where a council is using SDRO's basic service package and retain the role of handling parking fine requests for review or appeals, to ensure consistency and fairness across the state

Supported

IPWEA NSW supports this recommendation.

- 34.** The Office of Local Government should review and, where necessary update, its free parking area agreement guidelines (including model agreements) for use in agreements with private companies, State agencies and owners corporations. Councils should then have a free parking area agreement in place consistent with these guidelines.

OLG Comment:

The Guidelines were updated by OLG in December 2016 to largely deal with strata parking legislation.

Supported

IPWEA NSW supports this recommendation.

- 35.** *Not for consultation*

Companion animals management

- 36.** *Not for consultation*
37. *Not for consultation*
38. *Not for consultation*
39. *Not for consultation*
40. *Not for consultation*

Other

- 41.** The NSW Government should amend section 125 of the Roads Act 1993 (NSW) to extend the approval term for footway restaurants to 10 years and councils should ensure that approval conditions enable adequate access by utility providers.

Supported

IPWEA NSW supports this recommendation provided councils maintain the right to cancel any licenses should there be any breaches.

42. Councils should adopt measures to simplify and streamline the approvals process for local community events. This could include:

- specifying some temporary uses of land as exempt development in local environmental plans; or
- issuing longer-term development consents for periods of three to five years for recurrent local community events (subject to lodging minor variations under section 96 of the Environmental Planning and Assessment Act 1979 (NSW))

Supported

IPWEA NSW supports the recommendation to streamline the approval process for local community events. However, councils must be given the discretion to determine the appropriate periods for issuing longer-term development consents for certain events.

Conclusion

The IPWEA NSW Roads & Transport Directorate appreciates the opportunity to provide input to what would be the NSW Government's response to IPART's recommendations that seek to streamline the requirements imposed by local government to businesses and its constituents.

The Office of Local Government, as local government's lead state agency should act as the focal point for all councils and assist in managing the timetables for introduction of new legislation and reform programs. We also recommend that implementation be staggered in order to ensure that councils have the capability and necessary resources to facilitate and incorporate the new requirements.

Policy improvements to the regulatory framework within the local government sector, with even minor adjustments, can have far-reaching benefits for councils and the community.

Contact

Please do not hesitate to contact Mick Savage on tel: 8267 3000 or email mick.savage@ipweansw.org in relation to this submission.