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30 November 2012

Mr Glenn Worthington
Secretary
Joint Select Committee on the Constitutional Recognition of Local Government
P O Box 6021
Parliament House
CANBERRA ACT 2601

Dear Mr Worthington

Constitutional Recognition of Local Government

I understand that a Joint Parliamentary Committee has been established by the Federal Parliament to look at the report of the Expert Panel on Constitutional Recognition of Local Government, the level of support for the proposal by the States and Territories, and the potential consequences for local government and the States and Territories of such an amendment. It is noted that the Expert Panel last year recommended to the Federal Government that a referendum on financial recognition of local government was a viable option.

The establishment of the Joint Parliamentary Committee will allow the Federal Parliament to examine the constitutional recognition of local government question. The Committee will be able to test the level of bipartisan support at the State/Territory level as well as test public opinion through submissions and then make recommendations to the Parliament about the best way to proceed.

The purpose of this submission is to advise the Committee that Hornsby Shire Council has considered the matter of constitutional recognition of local government on a number of occasions. In this regard, it has been supportive of the Australian Local Government Association's (ALGA) position and the ALGA's submission to the Expert Panel in which it highlighted the strong support which clearly exists for ensuring that the Commonwealth can continue to fund local government directly, by removing any doubts about the constitutional validity of such funding. It noted that the financial recognition of local government can be achieved through a relatively simple change to Section 96 of the Constitution which currently allows the Commonwealth to fund the States and Territories.

On 15 June 2011, Council considered Mayoral Minute No. MM6/11 – Constitutional Recognition of Local Government (copy attached) – and resolved in part that:

Hornsby Shire Council declares its support for financial recognition of local government in the Australian Constitution so that the Federal Government has the power to fund local government directly and also for inclusion of local government in any new Preamble to the Constitution if one is proposed, and calls on all political parties to support a referendum by 2013 to change the Constitution to achieve this recognition.

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On 19 October 2011, Council considered Executive Manager's Report No. CC65/11 – Constitutional Recognition of Local Government (copy attached) – and resolved in part that:

A submission be forwarded to the Expert Panel on Constitutional Recognition of Local Government indicating Council's support for the inclusion in the Australian Constitution of the financial recognition of local government.

A copy of Council's submission to the Expert Panel following on from the above resolution is attached for the Joint Parliamentary Committee's information.

Through its continued support of the ALGA's position on this matter, Council is also of the view that:

- The Federal Government should have the power to provide funding directly to local government where this is in the national interest.
- Local government needs certainty of funding so that programs like Roads to Recovery can continue.
- An amendment to Section 96 of the Constitution should be proposed such that it reads "*Parliament may grant financial assistance to any state or local government body formed by or under a law of a state or territory.*"
- Bi-partisan support is an essential precondition if a referendum is to have the best chance of success.
- The referendum needs to be held at a time which maximises its chance of success.
- A publicly funded national education and awareness campaign to inform the public about the Constitution, how to change it, and about the question being asked before the referendum is essential.

Thank you for the opportunity of lodging a submission. If you have any questions or require further information, please do not hesitate to contact either myself or Council's Deputy General Manager, Corporate Support Division – Mr Gary Bensley.

Yours faithfully

Scott Phillips
General Manager

Attachments.

1. Mayoral Minute No. MM6/11 – Constitutional Recognition of Local Government (3 pages)
2. Executive Manager's Report No. CC65/11 – Constitutional Recognition of Local Government (5 pages)
3. Council's submission to the Expert Panel on Constitutional Recognition of Local Government – 27 October 2011 (2 pages)

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CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT

The Australian Local Government Association (ALGA), during 2008, commenced a campaign on behalf of all councils across Australia to pursue constitutional recognition for local government with the Australian Government. As a first step each council was requested to consider various models for recognition and advise ALGA of the council's preferred model by August 2008. Councillors were asked to provide input via a brief survey aligned to the ALGA's proposed objectives for constitutional recognition. The survey results demonstrated that all Hornsby Councillors supported constitutional recognition for local government, and the provision of a guaranteed minimum level of funding for local government was the most important objective to be achieved. A simplified or streamlined Federal funding system was also a high priority, whereas protection for the system of local government was not considered as important.

ALGA has now advised:

“Following the 2010 Federal Election, Prime Minister Gillard committed to holding a dual referendum on the Constitution Recognition of Local Government and the recognition of Indigenous Australians. The Referendum will most likely be held in conjunction with the 2013 Federal Election. The challenge for Local Government is now threefold; to ensure the Referendum is held; to ensure the type of recognition sought meets our requirement; and to make sure we have a positive result in the Referendum itself.

ALGA has devoted considerable resources over the past three years to developing the case for constitutional reform and the need for reform. That need was highlighted in stark terms in 2009 by the decision of the High Court in Pape v Federal Commissioner of Taxation. In that case the High Court set out the limitations of the Australian Government's powers and, in doing so, clearly indicated that the Australian Government does not have the power to fund local government directly.

It is obviously in the best interests of local communities that Federal Governments, whatever their political persuasion, have the capacity to fund councils directly to achieve national objectives. This is why our preference is for a pragmatic and simple change to the Constitution (most likely to Section 96) which would allow direct funding to continue. ALGA's research shows that this simple and pragmatic change is most likely to garner the necessary public support. ALGA has not ruled out recognition of local government in a Preamble to the Constitution if one is proposed but such limited recognition alone would not meet local government's requirements and address the uncertainty highlighted by the Pape case.

The form of financial recognition of local government proposed by ALGA, which will not impact on the relationship between councils and state governments, has been endorsed by your local government association and all other state and territory local government associations. ALGA believes it is now important that this position also be endorsed by all councils to demonstrate to Federal and state governments, oppositions and political parties that the position has widespread support within local government.”

ALGA has invited all councils to pass a resolution endorsing the position that a referendum be held by 2013 to change the Constitution to allow direct funding of local government bodies by the Commonwealth Government and also to include Local Government in any new preamble to the Constitution, if one is proposed.

It is ALGA's intention that a Constitutional Declaration for Councils will be submitted for signature by council representatives at the conclusion of the 2011 National General Assembly of Local Government on 22 June 2011. ALGA's objective is that all councils will be in the position to sign the Declaration supporting financial recognition at that time.

As part of local government's campaign, ALGA has indicated it is also important to ensure that national political leaders are left in no doubt about local government's commitment to Constitutional recognition. The Association is asking that councils write to the Prime Minister, the Leader of the Opposition and their local Federal Members of Parliament to advise them of Council's support for recognition after councils have passed a resolution.

The draft text of a possible resolution has been incorporated in the following recommendation, which is submitted for Council's consideration.

RECOMMENDATION

THAT:

1. Hornsby Shire Council declares its support for financial recognition of local government in the Australian Constitution so that the Federal Government has the power to fund local government directly and also for inclusion of local government in any new preamble to the Constitution if one is proposed, and calls on all political parties to support a Referendum by 2013 to change the Constitution to achieve this recognition.
2. Council write to the Prime Minister, the Leader of the Opposition and local Federal Members of Parliament to advise them of Council's support for constitutional recognition of local government as outlined in this resolution.

NICK BERMAN
Mayor

Attachments:

There are no attachments for this report.

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5 CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT

EXECUTIVE SUMMARY

In 2010, the Federal Government made a commitment to hold a referendum during the current Parliament or at the next election about the recognition of local government in the Australian constitution. Subsequently, on 21 June 2011, the Federal Government announced the establishment of an independent Expert Panel on Constitutional Recognition of Local Government.

The Expert Panel has released a Public Discussion Paper and is inviting all Australians to have their say on whether local government should be recognised in the Australian Constitution. The Discussion Paper identifies four ideas in respect of constitutional recognition which the Expert Panel believes would make a practical difference; have a reasonable chance at a referendum; and resonate with the public. The Panel's ideas (i.e. symbolic recognition, financial recognition, democratic recognition and recognition through federal cooperation) are not meant to be mutually exclusive and more than one could be incorporated in a referendum proposal.

The Australian Local Government Association has written to Council indicating that it will be making a submission to the Expert Panel emphasising a preference for the financial recognition of local government. The Association will outline the comprehensive process it has undertaken in reaching such a view based on their assessment of broad public support and support by councils. The Association will highlight the strong support which clearly exists for ensuring that the Commonwealth can continue to fund local government directly, by removing any doubts about the constitutional validity of such funding. The financial recognition of local government can be achieved through a relatively simple change to Section 96 of the Constitution which allows the Commonwealth to fund the States.

It is noted that at its 15 June 2011 Ordinary Meeting, Council considered a Mayoral Minute on the matter of constitutional recognition of local government and resolved that it declare its support for financial recognition of local government in the Australian Constitution so that the Federal Government has the power to fund local government directly and also for inclusion of local government in any new preamble to the Constitution if one is proposed, and call on all political parties to support a Referendum by 2013 to change the Constitution to achieve this recognition.

Based on the Expert Panel's view that an idea taken forward in respect of the constitutional recognition of local government should be able to make a practical difference, have a reasonable chance at a referendum and resonate with the public; and because it is appropriate that Council show its continued support for the process and for the Associations' actions in taking the matter forward on behalf of local governments across Australia, it is proposed that a submission be forwarded to the Expert Panel which indicates Council's preference for the inclusion of financial recognition of local government in the Constitution.

PURPOSE/OBJECTIVE

The purpose of this Report is to advise Council of the establishment of an Expert Panel on Constitutional Recognition of Local Government; to provide a copy of the Public Discussion Paper published by the Expert Panel; and to determine if, and what is to be included, in any submission made by Council in respect of the Discussion Paper.

DISCUSSION

Expert Panel on Constitutional Recognition of Local Government – Discussion Paper

In 2010, the Federal Government made a commitment to hold a referendum during the current Parliament or at the next election about the recognition of local government in the Australian constitution. Subsequently, on 21 June 2011, the Federal Government announced the establishment of an independent Expert Panel on Constitutional Recognition of Local Government.

The Expert Panel has recently released a Media Release and a Public Discussion Paper – September 2011 (copies attached) and is inviting all Australians to have their say on whether local government should be recognised in the Australian Constitution. In consulting with the community, the Panel specifically wants to form a view on:

- The level of support for constitutional recognition of local government.
- The various forms that such recognition could take, together with the advantages and disadvantages of different options.

It is noted that to succeed, a referendum must attract the support of a majority of votes nationally, and a majority of votes in a majority of States.

The Discussion Paper identifies four ideas in respect of constitutional recognition which the Expert Panel believes would make a practical difference; have a reasonable chance of success at a referendum; and resonate with the public. The Panel's ideas (listed below and detailed in the Discussion Paper), are not meant to be mutually exclusive and more than one could be incorporated in a referendum proposal:

- Symbolic recognition of local government (by including it in a new Preamble or Statement of Values).
- Financial recognition of local government (which would allow the Commonwealth to directly fund local government).
- Democratic recognition of local government (which would require States to establish and maintain local government).
- Recognition through federal cooperation (which would seek to encourage cooperation between the levels of government, including local government).

Written submissions are to be lodged by 4 November 2011 such that the Panel can report to the Government in December 2011 on its findings.

Australian Local Government Association's View

The Australian Local Government Association (ALGA) has recently written to Council (copy attached) indicating that it will be making a submission to the Expert Panel emphasising a preference for the financial recognition of local government. In this regard, the ALGA will outline the comprehensive process it has undertaken in reaching such a view based on their assessment of broad public support and support by councils.

The ALGA has advised that throughout 2008 it worked with State and Territory local government associations and councils to explore the need for constitutional recognition, the level of support for change and the options for recognition. Initial conversations held by many councils in the first half of 2008 led to an experts' forum and then to a major national constitutional convention held in Melbourne in December 2008. The convention was attended by approximately 600 delegates and identified possible options for consideration by the ALGA Board.

In depth public research in mid-2009 (which showed that the public would not support symbolic or more complex constitutional recognition, but would support financial recognition) and the outcome of the Pape Case in the High Court (which cast strong doubts on the validity of direct federal funding of local government) led the ALGA Board to determine that its preference was for the financial recognition of local government by the Commonwealth.

The ALGA has advised there is overwhelming support for the financial recognition option amongst local governments, with more than 400 councils across Australia already passing resolutions in support of such option. (N.B. Council's previous consideration of constitutional recognition is detailed in a separate section below)

The ALGA has indicated that its submission will highlight the strong support which clearly exists for ensuring that the Commonwealth can continue to fund local government directly, by removing any doubts about the constitutional validity of such funding. The Commonwealth already directly funds local government for the Roads to Recovery Program and the Regional and Local Community Infrastructure Fund (which was part of the stimulus funding provided by the Nation Building – Economic Stimulus Plan during the global financial crisis).

The High Court decision in *Pape v Commissioner of Taxation (2009)* cast doubt on the Commonwealth's power to provide this funding directly to local government. There is no general power in the Constitution which allows the Commonwealth to provide direct funding to local government to maintain services and infrastructure, including roads, and, because of this, the validity of funding is not certain. Local government requires certainty if it is to remain financially sustainable in the long term and to be able to deal with the growing needs of its communities. The High Court decision clearly signals a need for change and change cannot occur without amending the Australian Constitution.

The financial recognition of local government can be achieved through a relatively simple change to Section 96 of the Constitution which allows the Commonwealth to fund the States. Adding local government into this section would be a pragmatic response to the doubt identified in the Pape case. It would confirm the right of the Federal Parliament to fund local government directly, but it will not affect the relationships between local government and the State governments i.e. the States will continue to have the power to determine how councils operate.

Council's Previous Considerations

At its 15 June 2011 Ordinary Meeting, Council considered Mayoral Minute No MM6/11 - Constitutional Recognition of Local Government (copy attached). The Mayoral Minute indicated that during 2008, the ALGA commenced a campaign on behalf of all councils across Australia to pursue constitutional recognition for local government. As a first step, each council was requested to consider various models for recognition and to advise the ALGA of the council's preferred model by August 2008. In Hornsby's case, Councillors were asked to provide input via a brief survey aligned to the ALGA's proposed objectives for constitutional recognition. The survey results demonstrated that all Hornsby Councillors supported constitutional recognition for local government, and the provision of a guaranteed minimum level of funding for local government was the most important objective to be achieved. A simplified or streamlined Federal funding system was also a high priority, whereas protection for the system of local government was not considered as important. Following its consideration of the matter, Council resolved that:

Hornsby Shire Council declare its support for financial recognition of local government in the Australian Constitution so that the Federal Government has the power to fund local government directly and also for inclusion of local government in any new preamble to the Constitution if one is proposed, and call on all political parties to support a Referendum by 2013 to change the Constitution to achieve this recognition.

Proposal

Based on the Expert Panel's view that an idea taken forward in respect of the constitutional recognition of local government should be able to make a practical difference, have a reasonable chance at a referendum and resonate with the public; and because it is appropriate that Council show its continued support for the process and for the ALGA's actions in taking the matter forward on behalf of local governments across Australia, it is proposed that a submission be forwarded to the Expert Panel which indicates Council's preference for the inclusion of financial recognition of local government in the Constitution.

BUDGET

There are no budgetary implications associated with this Report.

POLICY

There are no policy implications associated with this Report.

CONSULTATION

There has been consultation with the current General Manager and the General Manager in waiting in the preparation of this Report.

TRIPLE BOTTOM LINE SUMMARY

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

As this Report simply provides Council with information and does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Executive Manager, Corporate and Community Division – Mr Gary Bensley. He can be contacted on 9847-6605

RECOMMENDATION

THAT:

1. The contents of Executive Manager's Report No CC65/11 be received and noted
2. A submission be forwarded to the Expert Panel on Constitutional Recognition of Local Government indicating Council's support for the inclusion in the Australian Constitution of the financial recognition of local government.

GARY BENSLEY
Executive Manager
Corporate and Community Division

Attachments:

1. Media Release dated 22 September 2011 - Call for Submissions - Constitutional Recognition for Local Government
2. Constitutional Recognition of Local Government - Public Discussion Paper - September 2011
3. Letter from the ALGA dated 23 September 2011
4. Mayoral Minute No. 6/11 - Constitutional Recognition of Local Government

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Your Reference:
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27 October 2011

The Secretariat
Expert Panel on Constitutional Recognition
of Local Government
GPO Box 803
CANBERRA ACT 2 601

Dear Sir/Madam

Constitutional Recognition of Local Government – Public Discussion Paper

At its Ordinary Meeting held on 19 October 2011, Council considered Executive Manager's Report No. CC65/11 – Constitutional Recognition of Local Government. That Report attached a copy of the Expert Panel's Public Discussion Paper – September 2011.

Council noted that the Discussion Paper identifies four ideas in respect of constitutional recognition which the Expert Panel believes would make a practical difference; have a reasonable chance at a referendum; and resonate with the public. Council also noted that the Panel's ideas (i.e. symbolic recognition, financial recognition, democratic recognition and recognition through federal cooperation) are not meant to be mutually exclusive and more than one could be incorporated in a referendum proposal.

Council is aware that the Australian Local Government Association intends making a submission to the Expert Panel emphasising a preference for the financial recognition of local government. The Association has indicated to Council that it will outline the comprehensive process the Association has undertaken in reaching such a view based on their assessment of broad public support and support by councils. The Association will highlight the strong support which clearly exists for ensuring that the Commonwealth can continue to fund local government directly, by removing any doubts about the constitutional validity of such funding. In this regard, the financial recognition of local government can be achieved through a relatively simple change to Section 96 of the Constitution which allows the Commonwealth to fund the States.

Following its consideration of Report No. CC65/11, Council determined it was appropriate to show its continued support for the current process and for the Australian Local Government Association's actions in taking the matter forward on behalf of local governments across Australia. Council would like, therefore, to advise the Expert Panel that Council's preference is for the inclusion of financial recognition of local government in the Constitution.

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Thank you for the opportunity of lodging a submission in respect of the Public Discussion Paper. If you have any questions or require further information, please do not hesitate to contact either myself or Gary Bensley - Executive Manager, Corporate and Community Division.

Yours faithfully

SCOTT PHILLIPS
General Manager