



COUNCIL REFERENCE: 24649E (D12/296274)
CONTACT PERSON: Greg Roberts
YOUR REF:

18 December 2012

Glenn Worthington
Joint Select Committee on the Constitutional Recognition of Local Government
PO Box 6021
Parliament House
CANBERRA ACT 2601

Dear Mr Worthington,

Constitutional Recognition of Local Government

This Council has, since 2001 supported the concept of Constitutional Recognition of Local Government where the following resolution was passed.

- “a) Council support the Australian Local Government Association in circulating petitions throughout Shoalhaven on Constitutional Recognition of Local Government to be presented to the newly-formed Parliament in early February, 2002.*
- b) Every endeavour be made to promote the Constitutional Recognition of Local Government within the community and copies of the Petition be made available to individual Councillors for distribution.”*

This was subsequently endorsed, by way of the following Notice of Motion on 23 August 2005, which again was unanimously supported by Council:

“In recognition that Local Government is a sphere rather than a tier of Government, the Australian Local Government Association calls on the Federal Coalition Government to move for a referendum to amend the Australian Constitution to recognise Local Government.”

Since that time, subsequent elected Councils have also unanimously supported this concept. However, there have been some variations to this position that have evolved through the considerable consultation that has taken place nationally, and at the subsequent National General Assemblies.

The variations from that initially resolved by Council were adopted by Council at its meeting on 27 October 2012, when it authorised a submission being presented that supported this concept.

The most fundamental question is *“should the role of Local Government in Australia be recognised by including a reference to Local Government in the*

Australian Constitution? The following key factors have led the Council to its position in supporting the Recognition of Local Government in the Constitution:

- It would formally recognise the role Local Government plays as the third tier of Government.
- It would enhance the status of Local Government in the community.
- It would be better able to attract the support and resources it needs.
- It would enhance the ability of local Councils to advocate the interests of their communities, through collaboration with other levels of Government.

It would also provide certainty that the Australian Government system would have three levels of Government and that this would not be able to be altered without a further referendum.

On the basis of the above, the Constitutional recognition of Local Government is fully supported.

Council has previously considered three options that were presented for consideration being symbolic recognition, financial recognition and democratic recognition of Local Government.

Symbolic recognition, it was felt by Council, would have minimal or no legal effect. For this reason, it is not supported by Council as the only reference and is only supported if it is adopted in conjunction with more substantive change to the Constitution, to embed Local Government recognition into the Constitution itself.

The concept of financial recognition is supported, as there are clear efficiencies to be gained to facilitate a process which would allow the Commonwealth Government to provide funding direct to local Councils, without having to pass the funding through State Governments. It is also supported on the basis that it would eliminate what appears to be current legal uncertainty surrounding current direct payments, such as the Roads to Recovery Program and the Regional Local & Community Infrastructure Program.

Councils across Australia have, during past stimulus programs introduced by the Federal Government, demonstrated how quickly and effectively Federal funding can be transformed into the delivery of many local projects.

This Council also supports the proposed amendment to Section 96 of the Constitution which allows the Parliament to grant financial assistance to any State or to any Local Government body formed by or under a law of a state or territory on such terms and conditions as the Parliament thinks fit. It is supported on the basis that it is clear and concise and is not subject to some limitation that a State or Territory may apply.

Direct funding from the Commonwealth Government should be unhindered, to ensure that it is not subject to disagreement or negotiations between the State and Commonwealth and, hence, be less effective, potentially more costly, and

not achieve the aims of providing value for money and direct benefit to the community, within potentially inferior time frames.

Council also supports the concept of Democratic Recognition of Local Government. The reason for this position is that Council considers it necessary to protect and ensure that local Councils, being the body closest to the people, are elected by the people. For this reason, it supports the following two additional clauses for inclusion into the constitution:

“Each State and Territory shall establish and maintain a system of Local Government bodies directly elected by the people in accordance with the laws of the State or Territory.

The Parliament of a State or Territory may, by Statute, dismiss a Local Government body and provide for the appointment of persons to perform its functions and exercise its powers until such time as a new Local Government can be elected.”

The latter is supported in order to protect the State and Territory Governments’ power to dismiss local Councils, as they have done in the past, when it has been considered necessary.

CONCLUSION

In short, Council makes the following key points –

That Council supports recognition of Local Government in the Australian Constitution.

The recognition of Local Government should be more than “symbolic”. Local Government needs both “financial” and “democratic” recognition in the Constitution.

Local Government should be referenced in the Preamble or Statement of Values and support the desirability of co-operation between all three levels of Government.

Thank you for the opportunity for Council to present its position.

Yours faithfully

Greg Roberts
Executive Support Manager