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ARTICLE

Australian local government sustainability and transformation: Structural reform and the fit for the future (F4F) reform initiative in New South Wales — forced council mergers

Ian Tiley

University of New England, Australia

Corresponding author: Ian Tiley, School of Business, University of New England, Australia.

itiley2@une.edu.au

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ABSTRACT

For decades, sustainability and, especially, long-term financial sustainability and transformation, primarily through structural and other modes of reform, have constituted major concerns and problems for 'grass roots' Australian government. Usually the catalyst for change in these areas has emanated from state and territory jurisdictions which have imposed reforms, often with little regard for local councils or the communities they serve.

Since August 2011, a structured process of dialogue and consultation has continued in the New South Wales local government sector, with the objective of implementing beneficial reform. The paper briefly explains this transformation initiative, particularly the NSW Government Fit for the Future (F4F) process and the current 35 council merger proposals.

The process is considered from the perspective of a long-term local government practitioner, elected representative, Mayor, and former member of the NSW Local Government Acts Taskforce (LGAT).

Keywords

local government, mergers, transformation, Fit for the Future, financial sustainability.

Introduction

Local government transformation in Australia is not new. Consolidation of local government areas has been occurring over many decades, accelerating from the early 1990s when the Kennett reforms were imposed in Victoria (VIC).¹ The Kennett reforms commenced the major changes that have since been implemented across all Australian jurisdictions. From 1910 to 2012, the mainly compulsory consolidation of local councils in Australian jurisdictions has reduced council numbers in New South Wales (NSW) from 324 to 152; VIC from 206 to 79; Queensland (QLD) from 164 to 73; South Australia (SA) from 175 to 68; Western Australia (WA) from 147 to 139; Tasmania (TAS) from 51 to 29; and, since 1995, in Northern Territory (NT), from 63 to 16.²

Structural reform through council mergers has been the 'blunt instrument' and predominant local government change mechanism, mostly initiated by state governments. Other reform methods have included introducing new legislation, a common feature in each jurisdiction, especially new local government legislation, facilitating the structural reform process; and functional reform through transfer of various tasks usually by state or territory governments. The latter process has occurred without commensurate resources and financial reforms.³

Garcea and LeSage⁴ identified five primary types of local government reform:

1. Structural reforms: Involve changes to the 'overall configuration' of the boundaries, number and types of municipal authorities; Functional reforms: Consist of changes to both the formal and informal functions performed by municipal governments, including the realignment of functions between local councils and other levels of government or other kinds of local governments;
2. Financial reforms: Represent revisions to the financial and/or budgetary frameworks of local councils, including changes to revenue sources, expenditures (in the form of financial responsibilities, requirements or restrictions on expenditures), and the general management of financial resources;
3. Jurisdictional reforms: Involve changes to the powers conferred on local councils to make decisions regarding, among other things, the structures, functions and finances of municipal governments; and
4. Internal organizational and
5. managerial reforms: Represent changes to the legislative, executive, management, and administrative structures and processes of local councils.⁵

This paper has eight sections: section two briefly notes the local government mergers in NSW to 2004 and introduces the current NSW local government transformation process; section three considers the roles of the government-established Independent Local Government Review Panel (ILGRP) and the Local Government Acts Taskforce (LGAT); section four considers integrated planning and reporting (IP&R) in the NSW local government context; the NSW Government response to the ILGRP and LGAT final reports, termed Fit For the Future (F4F), is addressed in section five; the role of the Independent Pricing and Regulatory Tribunal (IPART) in the transformation and F4F process is considered in section six; the current NSW Government merger proposals and public examination processes, announced on 18 December 2015, are considered in section seven; and concluding remarks are offered in the final section.

Current NSW local government transformation process

In 1910, there were 323 NSW local government councils.⁶ There have been several council merger processes since 1973-74, when the Barnett Committee reduced the then 198 councils to 177.⁷ A voluntary process

¹ R Kiss, 'Local Government to Local Administration: The New Order', in B Costar and N Economou (eds), *The Kennett revolution: Victorian Politics in the 1990s* (University of NSW Press, 1999) 110; D O'Neill, 'Victoria: Rolling back - or reinventing - The Kennett Revolution?' (2000) *Australian Journal of Public Administration*, 59(4) 109.

² B Dollery, B Grant and M Kortt, 'An Evaluation of Amalgamation and Financial Viability in Australian Local Government (2013) *Public Finance and Management* 13(3) 215, 218.

³ P Allan, *2009 NSW Local Government Financial Sustainability Review: How Sustainable are the Existing Financial and Infrastructure Policies of NSW Councils?* (Fiscal Star Services, 2009) i-vi, 1-22.

⁴ J Garcea and E C LeSage, *Municipal Reform in Canada: Reconfiguration, Re-Empowerment and Rebalancing* (Oxford University Press, 2005).

⁵ Dollery et al, above n 3, 855.

⁶ Ibid.

occurred in 1999-2000, resulting in only five reductions from 177 to 172 councils.⁸ The small number of voluntary amalgamations at that time underlined that councils were reluctant to voluntarily merge. Forced amalgamations in 2003-04 reduced council numbers to 152⁹ and there have been no further NSW council voluntary mergers since that time.

The present, ongoing NSW local government reform process commenced with the 'Destination 2036' assembly at Dubbo in August 2011,¹⁰ an initiative of the then NSW Minister for Local Government, Hon Don Page. All NSW mayors and general managers attended or were represented. There was agreement that changes should and would occur in NSW local government and that reform was essential.¹¹

The Dubbo gathering culminated in the *Destination 2036 Action Plan*,¹² released in June 2012. The ambitious plan objectives were to achieve efficient and effective service delivery; quality governance; financial sustainability; appropriate structures in local government; and stronger relationships between state and local government.¹³

Independent Local Government Review Panel (ILGRP) and Local Government Acts Taskforce (LGAT)

Minister Page then appointed the three-person ILGRP, led by Professor Graham Sansom, and requested that it consult widely and take into consideration the government's 'no forced amalgamations' policy. The ILGRP was provided broad terms of reference to investigate and identify options for governance models, structural arrangements and boundary changes for local government in NSW.¹⁴ ILGRP produced five discussion papers which stimulated much discussion, debate and well over 1000 submissions. The papers were: *Better, stronger local government: The case for sustainable change*; *Strengthening your community: Consultation paper*; *Better, stronger local government: The case for sustainable change*; *Future directions for NSW local government: Twenty essential steps*; and *Strengthening NSW remote communities: The options*.

In October 2013, the ILGRP delivered its final report, *Revitalising local government*, containing 65 recommendations.¹⁵ The principal recommendations concerned fiscal responsibility; strengthening revenues; meeting infrastructure needs; improving productivity and accountability; political leadership and good governance; advancing structural reform; establishing regional joint organisations; rural councils and community boards; metropolitan, rural and regional areas; the far west; and state-local relations. The ILGRP strongly held the view, as did councillors at Dubbo two years earlier, that no change was not an option.¹⁶

To assist the ILGRP, the NSW Division of Local Government requested NSW Treasury Corporation (TCorp) to provide material on council financial sustainability and to prepare reports for all 152 NSW Councils. TCorp's tasks included creating a definition of financial sustainability; establishing a set of appropriate benchmark indicators; developing an assessment methodology to compare councils against a sustainability definition; and reviewing historical financial results and the long term financial forecasts of each council.¹⁷

TCorp's key findings included that the majority of councils were reporting operating deficits; that financial sustainability was deteriorating; that an asset management gap existed; and that prevention of further financial deterioration was essential. The TCorp made recommendations that, at least: break-even operating

⁷ I Tiley, *Australian Local Government Council amalgamations: A Case Study of Clarence Valley Council, New South Wales*, (Doctor of Philosophy, University of New England, 2011).

⁸ Ibid 142-144.

⁹ Ibid 165.

¹⁰ Office of Local Government, *Destination 2036* (2011) 1 <<http://www.olg.nsw.gov.au/strengthening-local-government/local-government-reform/destination-2036>>.

¹¹ Elton Consulting, *Destination 2036* (Draft Action Plan, December 2011).

¹² Elton Consulting, *Destination 2036 Outcomes Report* (NSW Division of Local Government, 2011b).

¹³ Destination 2036 Action Plan Implementation Steering Committee, *Destination 2036 Action Plan June 2012* (Division of Local Government NSW, 2012).

¹⁴ Independent Local Government Review Panel, *Revitalising Local Government: Final Report of the NSW Independent Local Government Review Panel* (Sydney, NSW, 2013) 9.

¹⁵ Ibid.

¹⁶ Ibid 16.

¹⁷ New South Wales Treasury Corporation, *Financial Sustainability of New South Wales Local Government Sector: Findings, Recommendations and Analysis* (Sydney NSW, 2013).

positions were essential; pricing paths were needed for the medium term; rate increases must meet underlying costs; asset management planning must be prioritised; councillor and management capacity must be developed; there be improved use of restricted funds; and increased use of debt.¹⁸ Assessing the finances of all NSW councils, TCorp found that 25 per cent of councils were then in a weak or very weak financial position with a further 46 per cent expected to be in that position by 2016. An audit of each NSW council's infrastructure backlog was also delivered in June 2013. The combined backlog was \$7.4 billion, of which roads comprised \$4.5 billion.¹⁹

In 2012, the Minister also established the four-member Local Governments Acts Taskforce (LGAT), including the author, and charged it with making recommendations for a new local government Act for NSW and reviewing the *City of Sydney Act*.²⁰ The LGAT released two discussion papers: a *Preliminary ideas paper* and *A new local government Act for NSW: Discussion paper*. In October 2013 LGAT provided the Minister a final report: *A new local government Act for New South Wales and review of the City of Sydney Act 1988*, which concluded that many aspects of the *Act* still worked well; that the *Act's* effectiveness had been eroded because of about 170 incremental amendments since 1993; and that the Integrated Planning and Reporting (IP&R) provisions of the *Act*, while providing the primary strategic planning mechanism for local government, needed greater prominence and centrality in a new Act. The LGAT also recommended a range of means for streamlining and simplifying a new Act.²¹

Integrated planning and reporting in NSW local government

Integrated planning and reporting (IP&R) is a generally well-accepted major transformation introduced into NSW local government in 2010,²² which changed how councils planned and conducted their activities. IP&R is predicated on genuine up-front community engagement. The IP&R framework allows NSW councils to draw their various plans together, to understand how they interact, and to secure the maximum leverage from their efforts by planning holistically for the future. The framework consists of a 10-year community strategic plan; a resourcing strategy comprising a long term financial plan, workforce management plan and asset management plan; a four-year delivery program; a one-year operational plan and an annual report.²³ During the LGAT consultations it became evident that local government valued IP&R and strongly supported its strengthening and centralising in a new local government Act. In October 2014 the government responded by essentially supporting all the LGAT recommendations.

NSW Government response to ILGRP and LGAT: Fit for the Future (F4F)

In September 2014, the government adopted about two-thirds of the ILGRP recommendations.²⁴ The most important recommendations were to: establish an integrated fiscal responsibility program to address the TCorp findings referred to in section three; place local government audits under control of the NSW Auditor General; replace rate-pegging with a system of rate benchmarking or by removing complexity, costs and constraints to sound financial management; establish a borrowing facility to encourage increased use of debt where appropriate; adopt a uniform core set of performance indicators for councils linked to IP&R requirements; provide additional options for structures such as joint regional organisations, rural councils and community boards; and encourage voluntary council mergers.²⁵ For reasons which were not explained, the government did

¹⁸ Ibid 8-9.

¹⁹ Ibid.

²⁰ Division of Local Government, *Local Government Acts Taskforce Terms of Reference* (2012).

²¹ Ibid.

²² NSW, *Second Readings Speech Local Government Amendment (Planning and Reporting) Bill 2009: Agreement in Principle*, 25 June 2009 (B Perry).

²³ Division of Local Government, *Integrated Planning and Reporting Guidelines for Local Government in NSW* (2013).

²⁴ NSW Office of Local Government, *Fit for the Future: NSW Government Response - Independent Local Government Review Panel Recommendations and Local Government Acts Taskforce Recommendations* (NSW Government, 2014).

²⁵ Ibid 3-21.

not support the ILGRP recommendation to refer a number of council merger proposals to the Local Government Boundaries Commission for examination.²⁶

Also in September 2014, as part of its response to the ILGRP Report and Recommendations, the government announced a F4F package²⁷ and made available up to \$1 billion, primarily to assist council mergers, with the bulk of up to \$600 million as concessional finance rather than grants, assessed as F4F only. The package included \$258m to assist councils deciding to merge to make the transition; \$13m to support local transition committees; \$5.3m to establish Joint Regional Organisations (JOs); \$4m to help small councils develop innovative ways of working; and up to \$600m potential savings from concessional finance for F4F councils to invest in local infrastructure.²⁸

All NSW councils, except eight in the far west, were required, by 30 June 2015, to examine their financial situations, and to consider their future needs and the ILGRP recommendations. Councils were to make submissions as to how they would be F4F. The Office of Local Government provided mandatory submission templates. Council submissions needed to provide evidence in key areas of: scale and capacity; sustainability; efficiency; effective management of infrastructure and delivery of services for communities; and other areas, including the 'rigour of community consultation'.²⁹

NSW IPART and its findings

IPART was required by the government to develop a methodology for assessing F4F proposals that would be consistent with the State Government's local government reform agenda and, inter alia, included an assessment of councils' scale and capacity as a threshold criterion. Moreover, IPART was to undertake an assessment of whether each NSW council was financially fit for the future.³⁰ IPART used criteria and measures to assess sustainability, effective infrastructure and service management, and efficiency by employing seven local government financial ratios.³¹

IPART assessed council submissions under the F4F process, rating council proposals as 'fit' or 'not fit', and submitted its report to the government in October 2015.³² The assessments largely depended on information provided by the councils and the examination of long-term financial reports and other available data.³³ One hundred and forty-four councils across NSW submitted 139 proposals to IPART, which received 1550 submissions from residents and other stakeholders on the council proposals. Eighty-seven proposals were assessed as not fit. Only nine councils indicated any interest in voluntarily amalgamating, whereas the ILGRP had recommended mergers as a preferred option for 41 per cent of councils.³⁴

The IPART report demonstrated that there were major concerns about the sustainability of the NSW system of local government, with 60 per cent of NSW councils rated as not financially fit for the future, including 71 per cent of Sydney metropolitan councils and 56 per cent of regional councils. IPART analysed the business cases submitted by councils and estimated that up to \$2 billion in benefits could be realised over 20 years if mergers were to occur in Sydney alone.³⁵

Local Government NSW (LGNSW), the peak body for NSW local government, had long advocated voluntary mergers only, and opposed forced amalgamations. It established a new 'No Forced Amalgamation' campaign ('Our Council, Our Voice, Our Choice') with a website and a suite of posters, web banners, bumper stickers

²⁶ Ibid 17.

²⁷ NSW Office of Local Government, *Fit for the Future: What's on Offer for my Council?* (NSW Government, 2014).

²⁸ Ibid, 4; NSW Office of Local Government, *Fit for the Future: A Blueprint for the Future of Local Government* (NSW Government, 2014) 6.

²⁹ NSW Office of Local Government, *Fit for the Future: A Blueprint* 12.

³⁰ Independent Pricing and Regulatory Tribunal, 'Methodology for Assessment of Council Fit for the Future Proposals' (Local Government Consultation Paper, NSW, 2015).

³¹ Ibid 7.

³² Ibid.

³³ Local Government New South Wales, 'Communities Now Critical to Local Government' (Media Release, 20 October 2015) 1-3.

³⁴ Independent Pricing And Regulatory Tribunal New South Wales, 'Assessment of Council Fit for the Future Proposals' (Local Government Final Report, NSW, October 2015).

³⁵ Ibid 1-2.

protest signs, postcards and template letters, providing councils and communities with support to strongly demonstrate opposition to the likely forced council mergers.

Aggressive media releases from LGNSW President Keith Rhoades at the October 2015 Association State Conference, and his statements, for example, that the Minister had ‘incredible gall to claim councils are greedy’ and ‘he is trying to scare the community with the prospect of rate rises’, signalled inevitable conflict, given Minister Toole and the government had clearly expressed a determination to implement reforms.³⁶

NSW Government council merger proposals

Following the release of the IPART F4F report, the NSW Government notified a final 30-day consultation opportunity, until 18 November 2015, to inform the government’s position on NSW local government reform and to enable councils to respond to the IPART findings. For those councils assessed as not F4F, the government sought their merger preferences. Virtually no councils responded.³⁷

On 18 December 2015, the NSW Premier and the Minister for Local Government announced that the government had decided to refer 35 NSW council merger proposals, which it had approved, to the Chief Executive of the Office of Local Government for examination.³⁸ The Chief Executive provided Instruments of Delegation under Section 745(1) of the *Local Government Act* to 18 delegates who would independently assess each proposal through meetings with affected councils, public inquiries and a submissions process. If all proposals were implemented, the number of NSW councils would be reduced from 152 to 112. On 26 February 2016, the government referred a further five of its alternative merger proposals for examination by delegates.³⁹

The examination reports prepared by the delegates on the merger proposals were submitted to the reconstituted Local Government Boundaries Commission⁴⁰ for comment and to the Minister for Local Government for decision as to whether mergers would proceed. On 12 May 2016 the government by proclamation formed 19 merged councils across NSW.

Conclusion

Opposition to mergers, particularly by councils, and community fear of change and loss of local democracy has been prevalent in NSW for a long time. It has now been adequately demonstrated that most councils can and should perform much better, especially in terms of services and infrastructure provision for the communities they represent. Opposition to amalgamation in some quarters on the basis of perceived lack of empirical evidence is often a smokescreen, usually for maintaining existing power bases. Clarence Valley Council, for example, experienced net economic benefits from its merger since inception in 2004 until 2010. That study demonstrated that, at least in some circumstances, council amalgamations as a reform method do work and that, from a fiscal standpoint, bigger is indeed better but perhaps not obviously cheaper.⁴¹

Council mergers will not always be appropriate and one would probably not commence the structure of local governments in Sydney now with 41 councils, as existed prior to the current mergers. Nor for example, in the Richmond-Tweed region in northern NSW, would local government be comprised of the present six general purpose and three county councils. After almost four-and-a-half years of consultation and dialogue, the stage is undoubtedly set for significant council mergers in NSW. In fact, in 2016, 20 merged councils were constituted and several more may be merged depending on the outcome of current council-initiated litigation against the government.

³⁶ B Smith, *From the President: IPART Assessment of NSW Fit for the Future Proposals* (IPART NSW, 20 October 2015) 1-4.

³⁷ Office of Local Government NSW, *Council Circular Release of IPART’s Fit for the Future Report: Announcement of Stronger Communities Fund* (Sydney, NSW, 20 October 2015).

³⁸ NSW Office of Local Government, *Council Boundary Reviews* (2015) 1-14 <www.councilboundaryreview.nsw.gov.au/>.

³⁹ Local Government NSW, *New Merger Proposals Listed* (Local Government NSW Weekly 08/16) 1.

⁴⁰ NSW Office of Local Government (2015), above n 39.

⁴¹ Tiley, above n 8, 258.

There exists a continuing, long term, often uninformed and unjustified resistance, even intransigence, towards structural reform from within local government leadership and some councils. Furthermore, the LGNSW catchcry of 'fix the funding first'⁴² could be seen as seeking to sideline the vital importance of more appropriate and modern local government structures for the future. The sector needs to demonstrate effective leadership and a preparedness to improve capacity and performance for the communities they represent.

Present boundary structures were established more than a century ago. The imperative of financial sustainability establishes the case for structural change in NSW local government, given rapidly improving transport and communications and ever growing community demands on councils. New and improved methods of community engagement can address perceptions of loss of local democracy and community. Citizens are rightly demanding better services and more efficient and responsive councils.

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⁴² D Rygate, 'Local Government Reform: Fix the Funding First' (Paper presented at the Local Government NSW Finance Summit, Sydney NSW, 2015).

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