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NSW Local Council investment exposures

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Abstract

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NSW Local Council investment exposures

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Abstract

The decline in the sub-prime market in the United State of America in 2007 -2008 and the corresponding decline in the market values of other financial investments has had a significant financial impact on many of the individuals and organisations who participated in aggressively promoted investment schemes. The New South Wales (NSW) Local Government Councils was one such group of organisations impacted by the decline in value of these types of investments. At the end of the 2006-2007 financial year local councils in New South Wales had invested $590 million dollars in structured financial products such as collateralised debt obligations (CDO). By the end of January 2008, six months later, the market value of these investments dropped $200 million (34%) to $390 million. In response to the decreasing value of the local council investments the NSW State Government commissioned a review of the financial exposures of NSW local councils in structured financial products. The review found that while acting within the parameters of the Local Government Act (1993), local councils had pursued high return high risk investment strategies. This paper reviews and evaluates financial investment exposures of the local councils in NSW and the resulting mix (unqualified/qualified) independent audit opinions issued on their general purpose financial reports. This paper will contribute to the literature on the wide spread impact of the 2008 global financial crisis as well as the quality of Local Government council financial report audits.

Keywords: NSW Local Government; Qualified audit opinions; Local Government investments

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INTRODUCTION

The New South Wales (NSW) State Government Department of Local Government (DLG) is a state regulatory agency responsible for providing policy and the legislative foundation for local councils in New South Wales. The DLG is responsible for the overall legal management and financial framework for Local Government (DLG, 2009). This responsibility is disclosed in the *Local Government Act of 1993* (hereafter referred to as the 1993 Act) and "provides the legal framework for an effective, efficient, environmentally responsible and open system of Local Government in New South Wales" (section 7. LG Act 1993). In addition to being responsible for the implementation of the 1993 Act the Department of Local Government also provides policy advice to the NSW State Government, manages the relationship between councils and the State Government and is responsible for the financial framework under which Local Governments operate (DLG 2008a).

The 1993 Act gives councils the authority "to carry out activities, appropriate to the current and future needs of local communities" (section 7. LG Act 1993). To this end section 625 of the 1993 Act provides councils with the authority to invest monies not required for immediate use by the council in a range of financial instruments. This authority to invest monies provided by the ratepayers within the community, has a number of restrictions with respect to the types of allowed investment types, which are outlined in Investment Order of the Minister for Local Government (refer appendix 1).

This paper looks at the financial exposures of councils in NSW with respect to their investments in structured financial products such as collateralised debt obligations (CDOs) and the impact of the significant decrease in the market value of many of these investments. It further examines the investment exposures of councils as disclosed the financial reports of 2007/08, how the independent financial report auditors addressed the investment issues and the impact investment exposures may have on the ability of local councils in NSW to continue to provide services for their constituents. The following section is a brief outline of the history of the NSW Local Governments and will provide a background for the paper.

BACKGROUND TO LOCAL GOVERNMENT STRUCTURE IN AUSTRALIA

Australia operates under a three tier government system consisting of Federal (Commonwealth) Government; State Government and, Local Government (Boon *et al*, 2005). The Federal Government, under the *Commonwealth Constitution Act 1900*, oversees a federation consisting of six states and two territories (Burritt and Welch 1997) and within the States and Territories are Local Government councils who, in Australia, are responsible for building and maintaining roads, developing infrastructure for essential services, such as water supply and providing waste removal, community sporting facilities and care services such as child and aged care (Boon *et al*, 2005). Due to the omission of any mention of Local Government authorities within the Commonwealth Constitution (Stilwell and Troy 2000) Local Government councils are reliant on the states and territories for authority to perform their functions and to raise funds. Local Government powers continue to be defined and controlled by State Government ministers who have the authority to remove or reduce Local Government powers and responsibilities, or even change their boundaries (Stilwell and Troy 2000, p. 924). Nevertheless, Local Governments understand and appreciate the local and regional issues better than either the Federal or State Governments and it is the local councils that are the “most sensitive to” community interests, even though they have been “relegated to a subordinate role” (Stilwell and Troy 2000, p. 909). This paper focuses on the Local Government councils in the Australian state of New South Wales (NSW).

NSW LOCAL GOVERNMENT EXPOSURE

Since the enactment of the 1993 Act Local Government councils have been predominantly investing in short term income-producing products, such as CDOs, and due to the nature of their operations and organisational objectives the funds invested are more likely to be needed to fund long term infrastructure requirements (Gold 2008), such as road building and maintenance.

There are a variety of reasons for Local Government councils investing financial resources in income-producing products. If a council is unable to get a return from their investments then their financial reserves would gradually be eroded due to the effects of inflation which inturn would reduce their ability to fund future infrastructure investments and meet long term liabilities such as employee entitlements. However, it seems that Local Government councils in pursuing high return investments have not only been trying to preserve the buying power of their capital, but have also using financial reserves to generate profits with which to finance current spending requirements. This policy has the capacity to create a number of issues as pursuing higher returns also means accepting higher levels of risk. Therefore the implication of high return capital investments is that the returns and potentially the capital also could be unsecured leaving the Local Government councils at risk of significant losses.

To determine the justifications behind why councils are willing to pursue higher risk investments, even if they are high yielding, an understanding of the revenue constraints within the sector needed to be developed (Gold 2008, p 37). Councils derive the bulk of their own-source revenue from property rates. In NSW, a formal "pegging" regime exists which constrains councils - without prior ministerial approval - from increasing rates above broad measures of inflation (Gold 2008). Local Government councils are increasingly being asked to provide more services and take over the roles previously carried out by Federal and State Governments such as “provide pensioner rebates and concessions; incurring costs to maintain roads and airports transferred from other tiers of government ownership; and non-indexation of fees and charges” without “corresponding commensurate increases in funding” (Gold, 2008. p 38). Revenue raising powers are concentrated at the federal level, and a concentration of expenditure functions are carried out at the state and Local Government, which creates reliance by Local Government councils on funds from Federal and State Governments to fund operations (Dollery, Fletcher and Prasada Rao, 1998). The likelihood of underfunding and heavy reliance on funding from Federal and State Governments has encouraged local councils to pursue the higher returns from market based investments. This is consistent with one of the findings of the Cole report “… the attraction of NSW Councils of higher prospective returns offered by new investments different from the traditional suite of fixed interest products was an enticing proposition” (2008, p. 9).

In the financial year 2007-08 the NSW Local Government sector was a $7.3 billion industry with the councils collecting $3.5 billion in rates and charges (DLG 2008b, p. 6). Unlike the majority of other public sector organisations the local councils in NSW have been allowed, under section 625 of the 1993 Act, to invest in a variety of investment schemes for the purpose of earning additional revenue. As at 30 June 2007 the face value of the total investments of NSW local councils totalled $5.7 billion. Given the size of the investments, which have varying degrees of risk, and the fluctuating economic environment (DLG 2008c) as well as the global impact from the sub-prime crisis in the United States, the NSW Department of Local Government commissioned a review of the investments of Local Government councils. The purpose of the review was to verify the total investment exposure of NSW Local Government councils as well as determine the extent of unrealized losses from these investments due to the decline in the sub-prime mortgage market in the United States (Cole 2008, p. 3). In April 2008 the final report, the Cole Report, of the commissioned Review of NSW Local Government Investments was published. The following table outlines the exposure identified in the report

Table 1: Value of Local Government Investment Losses

Investment Type	**Face Value @ 30/6/07 ($m)**	**Market Value @ 31/1/08 ($m)**	**Estimated Loss ($m)**	**Estimated Loss (%)**
CDO	590	390	200	34%
Capital protected	450	400	50	11%
Managed Funds	2,420	2,350	70	3%
Subordinated debt	600	600	Nil	Nil
Term Deposit, cash, bills	1,630	1,630	Nil	Nil
Total	**5,690**	**5,370**	**320**	**5.6%**

(From Cole 2008, p. 14)

Council funds are primarily composed of two types; short term working capital, which account for approximately 70% of the total, and longer term funds comprising the 30% residual, which includes capital expenditure commitments (Cole 2008, p9). The purpose of investing long term funds should be to ensure that the return generated is sufficient to negate the negative impact of inflation on future capital works and preserve the purchasing power of financial reserves. However, Cole (2008) highlighted that NSW councils were attracted to higher prospective returns available by investing in new investment types, such as CDOs, that differed from the traditional fixed interest products (p9-10).

These new investment types meet the requirements of the Minister of Local Government Investment Order (refer Appendix 1) and while compliance with the conditions is essential for councils to invest, it should not have been the only or sufficient requirement to qualify these types of investment, as NSW councils are also required to comply with their fiduciary responsibilities as trustees of public funds (Cole 2008, p10). Commonly the principal investment amounts were credit rated or bank guaranteed, however the income stream from the investments were not. Simple compliance with the Investment Order was a liberal interpretation of fulfilling the requirements and expectations associated with managing public monies, and did little to account for the risk associated with these types of financial instruments. Gold has proposed that this demonstrates that Local Government investment governance is inadequate, and that stakeholders, rate payers and the State Government, were being exposed to "imprudent investment decisions and economically sub-optimal outcomes" (2008, p51). Even before the credit market crisis was apparent, the NSW Department of Local Government was providing information to Local Government councils reminding them of their fiduciary duties and responsibilities in respect to financial investments. This communication highlighted to the Local Government councils that their responsibility was to ensure that investments were made in accordance with the 1993 Act with the "onus for investments...to be on preservation of capital rather than the rate of return" (DLG 2006) .

The biggest exposure for NSW Local Government councils is in relation to the investments in collateralised debt obligations (CDOs) where the investments are in "asset backed securities whose underlying collateral is typically a portfolio of bonds or bank loans" (Duffie and Garleanu 2001, p. 41). The face value of the investments in CDOs dropped from \$590m on 30th June 2007 to \$390m on 30th June 2008, an estimated loss of \$200 million (Cole 2008, p. 3).

One of the main promoters of CDO's to the NSW Local Government councils was Lehman Brothers who were "notorious for marketing investment schemes to local councils which has resulted in those councils losing millions of ratepayer's dollars" (Roskam, 2008, p. 9). Unfortunately for millions of investors, (including NSW Local Government councils) who invested in Lehmans Brothers' financial investment schemes the investment bank filed for bankruptcy on 14th September 2008. Zingales suggests the aggressive leverage policy of Lehman Brothers', "bad regulation, lack of transparency, and market complacency brought about by several years of positive returns" (2008, p. 2) led to the collapse of Lehman Brothers. The resulting collapse of Lehman Brothers, who were the fourth largest investment bank in the United States, "is generally credited with precipitating the near total collapse of confidence that subsequently engulfed the international monetary system" (Roskam, 2008, p. 9).

In response to the collapse of Lehman Brothers the NSW Department of Local Government issued a Council Circular to all NSW councils, two days after the collapse, on the 16th September 2008 requiring councils to "seek urgent financial advice as to their potential exposure to Lehman Brothers, as a matter of urgency. Councils are *required* [emphasis added] to identify investments that have direct exposure to Lehman Brothers and outline the effect it may have on the Council's activities" (DLG, 2008c).

The Cole report (2008) estimates that overall NSW councils have lost \$320 million from their investment portfolio, which represents 5.6% of total investments and 15.2% of long term funds (p11). The problem with interpreting these figures is that most of these losses are from unrealised investment portfolios and the valuations of future returns have generally been provided by those who were also involved in marketing the products to councils. Therefore the future returns may potentially be significantly overstated and Cole (2008, p11) identified the exposure in one case to be 85% of the capital investment. Additionally, a number of councils are holding 45% of their total investments in financial instruments; such as CDO's, which potentially have the greatest risk of loss.

NSW councils seem to have pursued a policy of either chasing higher returns or allowing themselves to be lured into investments containing higher risk factors than they have traditionally accepted. It is unclear if there was a true understanding by councils of the relationship between higher risk and return trade-off. The up side of accepting higher risk was capped at "a couple of percent above the risk free rate" (Cole 2008, p11), yet the downside, as stated previously, has been recorded as 85% of the original investment. This suggests that some local councils failed to understand that taking on higher risk could generate higher returns as well as increase the potential for significant losses.

The following section outlines the audit function and the application and findings of recent Local Government councils' financial reports with specific focus on the audit disclosures.

AUDIT FUNCTION

Sequeria and Johnson explain that "the audit function has assumed the role of conferring credibility on the financial statements and ensuring that the statements could be relied on for decision making" (2004, p. 94) by various stakeholders including members of the community and other government organisations. Boon, McKinnon and Ross explain that stakeholders need to have confidence that the audit report is reliable so they are able to make appropriate informed decisions on the financial reports (2008, p93). The auditor is required to obtain a level of certainty that will enable them to "provide 'reasonable assurance' about the correctness of the financial reports" (Boon *et al,* 2008, p93). To reduce the likelihood of material misstatements, areas that are judged by the auditor to be high risk are likely to attract greater attention. The financial investments of Local Government councils is one area which has a high level of risk, in relation to their valuation, and is an area for which auditors collect evidence to determine whether or not there is a likelihood of a material misstatement.

When conducting an audit of a Local Government council's General and Special Purpose Financial reports auditors are required to prepare a report which includes a statement whether, in the opinion of the auditor the financial reports presented have been prepared according to the relevant standards, are consistent with the council's records and fairly present the financial position of the council (1993 Act, section 417 (2)). The purpose of the audit is to provide assurance about whether the financial reports have been prepared in accordance with both the relevant accounting standards and with the Local Government Code of Accounting Practice and Financial Reporting. However, providing assurance does not guarantee there are no errors, omissions or that no fraudulent activities have taken place. Rather the audit reports are supposed to afford a level of confidence that the financial information provided can be relied upon, particularly by the stakeholders of the councils, in making decisions based about the financial information contained in the financial reports.

AUDIT REPORTS

In 2008 there were, 152 Local Government councils in the State of NSW. Each of these 152 councils was classified based on their location in the State, for example Urban – metropolitan, according to the Australian Classification of Local Governments (ACLG) (Murray and Dollery 2004).

In this study the focus was on reviewing the online audit reports of the 2007-2008 financial statements of the NSW Local Government councils. Of the 152 Local Government councils it was only possible to access the online audit reports of 112 councils (74%). For the purposes of this report the councils that did not include their financial reports or audit reports on their website have been excluded. However, the lack of financial reports available online and the exclusion of some of the audit reports does appear to be a matter for concern regarding the transparency for Local Government financial activities.

The following table shows the spread of qualified and unqualified audit opinions issued on the 2007-08 financial statements of the 112 NSW Local Government councils included in the study.

Table 2: Audit Opinion

Local Government category	Number analysed	Unqualified	%	Unqualified emphasis of matter	%	Qualified	%
Urban Metropolitan developed and Capital City	28	13	46	1	4	14	50
Urban Regional	34	13	38	3	9	18	53
Urban Fringe	11	7	64	0	0	4	36
Rural Agricultural	39	28	72	1	2	10	26
Rural Remote	0						
Total	112	61	54	5	5	46	41

This table indicates that of the 112 Local Government councils whose financial reports were analysed only 54% received an unqualified audit opinion, the opinion of the auditor that the financial reports were free from material misstatements, give a true and fair view of the organisation and have been prepared in accordance with the relevant standards and Acts. A large percentage of audit reports received a qualified audit opinion which is a cause for DLG and the councils. The main reason for 41% of the audit opinions included in this study receiving a qualified audit report was due to the councils' exposure to the impacts from the collapse of the US sub prime mortgage market. In addition most of the audit reports that were not unqualified, expressed uncertainty about the full impact that would eventually be recorded on council's investment portfolios due to the problems with investments in the US. The following is an extract from the independent audit report for one council's who received a qualified audit opinion on their general purpose financial reports.

> "Basis for Qualified Auditor's Opinion
>
> Since July 2007, global financial markets have experienced a period of high volatility led by events in the US housing market, particularly sub prime loans, which has impacted the value, recoverability, liquidity, cash flows and rates of return of many financial assets including Collateralised Debt Obligations (CDOs) … [m]any of these securities do not have market values that are independently quoted … [i]ndependent market valuations are not readily available … values are assessed based on estimates from issuers and/or evaluation models for which there is limited market evidence available to

> verify their reasonableness. Further, the ongoing volatility of financial markets creates greater uncertainty to the valuation process.
>
> These circumstances have resulted in our inability to obtain sufficient appropriate audit evidence to satisfy ourselves as to the fair value and recoverability of $8.2 million of Council's total investment portfolio" (Auburn 2008, pp. 48 -49).

While the level of qualified audit opinions is not surprising considering the recent global financial crisis, there were other aspects of the audit reports that raised concerns. It was discovered that there was a large proportion of external auditors who had used the same wording and in some cases specific accounting firms used a standard letter of qualification with spaces to hand write in details such as page numbers. This tends to imply these were generic reports, which therefore raises concerns about the independence of these audit reports. Commonality of wording both within audit firms and between audit firms could be an attempt to create a common response to the issue which would be an indicator of lack of auditor independence.

Another finding from the review of the Local Government council's financial reports showed that the audit fees disclosed within the reports were ambiguous, with separate audit fees relating to a number of audit functions including, but not limited to, audits of the financial reports. This raises questions with respect to the independence of auditors if there is fee reliance on additional audit functions (Craswell et al 2002). Craswell (1999) suggested that qualified audit reports are a strong indicator that independence has not been compromised, due to the competitive nature of auditing. This may not be true in the public sector if there are limited firms willing to engage in auditing of Local Government bodies. In 2006 there were more than 40 audit firms engaged in auditing of NSW Local Governments councils and by early 2010 the number was reduced to 19 different firms, suggesting reduced competition levels. However if qualified audit reports are an indicator then the high proportion of these audit reports would show that independence has been maintained.

The introduction of competitive tendering for NSW Local Government financial statement auditing in the 1993 Act has established the possibility that auditors may experience greater time budget pressures. Coram, Ng and Woodliff (2003) survey based study on audit quality found 48% of participants admitted to having to reduce audit quality practices during the completion phase of the audit, which includes the review for subsequent events. This would suggest that with complex issues such as the losses related to the collapse of CDOs, auditors may not have allocated sufficient time to determine the full extent of the losses.

CONCLUSION AND FUTURE RESEARCH

This paper has identified the high exposure that a number of local councils in NSW have in relation to their investments in structured financial products such as CDO's. These investments are unlikely to provide sufficient returns of both initial capital and capital growth needed to meet the planned obligations and liabilities for which the financial investments were intended. It has been highlighted that there is a need to improve the standards for measurement and reporting of these types of investments as was outlined in a significant number of audit reports that the auditors were unable to reliably value council investments in CDO's. This inability to reliably determine the correct value of these investments resulted in over 41% of the local council financial statement audit opinions reviewed receiving a qualified audit opinion. This research suggests some local councils either do not understand, or do not have the capacity to properly manage the fiduciary duty requirements associated with controlling public funds. In particular, related to the fiduciary duty to act with due care and diligence, was the onus on preservation of public funds (DLG, 2006; Gold, 2008). There appears to have been large amounts of trust placed in providers of the financial investment products and a lack of consideration given to the risk associated with investing in these types of products versus the moderately higher returns that the financial investment products purchased by local councils offered. This paper has highlighted a number of areas of interest for further research including why was there standard disclosure in many of the qualified audit opinions on the sub-prime issues from a range of different auditors? Is it a reflection of a perceived need by local council auditors to be seen to be consistent in their audit reporting? As identified by Cole (2008) there is a need for a standard analysis and reporting method to be developed for local councils and this may be seen as an attempt by auditors to provide that consistency.

Councils are required to report the fees that they have paid to auditors and the financial reports show these fees. However, from analysis of the financial reports and audit reports, there does seem to be a lack of clarity as to what those audit fees were for. For example some councils have shown an audit fee presumably for the audit of the financial reports, and then have also shown other audit fees without providing information as to what those additional audit fees consisted. While it is likely, and may be presumed that the other audit fees are for audits of particular sectors such as OHS, water or environment, it needs to be clarified for a number of reasons. For example, if the same firm is conducting the additional audits, and the fees earned from the additional work is substantially greater than from the audit of the financial reports, there may be some compromise of the independence of the financial audit due to the reliance by the auditors on revenues from one source. Likewise it may affect the competiveness of the financial audit tender process if some firms are unable to conduct the additional audits and the council only desiring to employ one firm.

Another important element arising from this research is that councils do not separate funds that relate to particular liabilities or that have separate restrictions associated with them. The financial reports do not specify what funds have been invested in CDO’s, and are therefore at risk of substantial losses, as councils appear to reported the treatment of all investment funds in the same manner. There are also inconsistencies among the accounting policies between councils that therefore impede transparency (Cole 2008 p24). Current reporting policies seem to ignore the risk that particular products may need to be liquidated prior to maturity triggering losses that would need to be reported. One solution to this would be to promote the use of current market valuations across the full range of investment products and require disclosure of which funds have been invested in different products. There seems to be a strong need to improve consistency of the reporting, and the accounting methods used to account for, and value these products. It is also evident Local Government councils and the NSW Department of Local Government need profession support and guidance to understand financial investment products and the fiduciary responsibilities they have for managing public moneys.

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Appendix 1

LOCAL GOVERNMENT ACT 1993 – INVESTMENT ORDER

(Relating to investments by councils)

I, David Campbell, MP, Acting Minister for Local Government, in pursuance of section 625 (2) of the Local Government Act 1993 and with the approval of the Treasurer, do, by this my Order, notify for the purposes of section 625 of that Act that a council may only invest money (on the basis that all investments must be denominated in Australian Dollars) in the following forms of investment:

(a) any public funds or Government stock or Government securities of the Commonwealth or any State of the Commonwealth;

(b) any debentures or securities guaranteed by the Government of New South Wales;

(c) any debentures or securities, issued by a public or local authority, or a statutory body representing the Crown, constituted by or under any law of the Commonwealth, of any State of the Commonwealth or of the Northern Territory or of the Australian Capital Territory and guaranteed by the Commonwealth, any State of the Commonwealth or a Territory;

(d) any debentures or securities issued by a Territory and guaranteed by the Commonwealth;

(e) any debentures or securities issued by a council (within the meaning of the Local Government Act 1993);

(f) mortgage of land in any State or Territory of the Commonwealth;

(g) purchase of land (including any lot within the meaning of the Strata Schemes Management Act 1996) in any State or Territory of the Commonwealth;

(h) interest bearing deposits in a bank authorised to carry on the business of banking under any law of the Commonwealth or of a State or Territory of the Commonwealth;

(i) interest bearing deposits with a building society or credit union.

(j) any bill of exchange which has a maturity date of not more than 200 days; and if purchased for value confers on the holder in due course a right of recourse against a bank, building society or credit union as the acceptor or endorser of the bill for an amount equal to the face value of the bill;

(k) any securities which are issued by a body or company (or controlled parent entity either immediate or ultimate) with a Moody's Investors Service, Inc. credit rating of ``Aaa", ``Aa1", ``Aa2", ``Aa3", "A1" or "A2" or a Standard & Poor's Investors Service, Inc credit rating of ``AAA", ``AA+", ``AA", ``AA-"; "A+", or "A" or a Fitch Rating credit rating of "AAA", "AA+", "AA", "AA-", "A+" or "A";

(l) any securities which are given a Moody's Investors Service Inc credit rating of ``Aaa", ``Aa1", ``Aa2", ``Aa3","A1"; "A2" or ``Prime-1" or a Standard and Poor's Investors Service, Inc credit rating of "AAA", "AA+", "AA", "AA-", "A+"; "A"; "A1+" or "A1" or a Fitch Rating credit rating of "AAA", "AA+", "AA", "AA-", "A+" or "A";

(m) any debentures or securities issued by a bank, building society or credit union;

(n) a deposit with the Local Government Investment Service Pty Ltd;

(o) a deposit with the New South Wales Treasury Corporation or investments in an Hour-Glass investment facility of the New South Wales Treasury Corporation.

Dated this 15TH day of JULY 2005

Hon DAVID CAMPBELL MP
Acting Minister for Local Government

Sourced from Cole 2008