



Institute of
Public Works
Engineering
Australia
(NSW Division)



IPWEA (NSW) ROADS & TRANSPORT DIRECTORATE

Performance Benchmarking Australian Business Regulation
Productivity Commission
PO Box 1428
Canberra City ACT 2601

By email: localgov@pc.gov.au

31 October 2011

Dear Sir / Madam,

Performance Benchmarking— The Role of Local Government as a Regulator

INTRODUCTION

The Institute of Public Works Engineering Australia (IPWEA) is a not for profit, membership based, professional organisation representing engineers and others involved in the provision of public works and services predominantly in the local government sphere.

The Roads & Transport Directorate has been set up by IPWEA (NSW) in conjunction with the Local Government and Shires Associations to provide support to its members working in local government across the state. It is supported financially by membership contributions from Local Councils in NSW.

BACKGROUND

The Roads & Transport Directorate has been set up to meet the demand from members of IPWEA (NSW) over the past few years to act as a focus for research activities and to provide technical advice.

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 in the critical area of consistent and cost effective asset management and road safety;

- Assisting the IPWEA (NSW), the Local Government Association of NSW and the Shires Association of 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.

The Directorate commenced operation in October 2004 and has been involved in determining the needs of members and developing solutions to meet those needs. Over that period the Directorate has made submissions on a range of issues. Copies of these submissions¹ are available on the website at: www.roadsdirectorate.org.au.

INFRASTRUCTURE FUNDING FOR NSW LOCAL ROADS – BACKGROUND CONTEXT

In NSW, Local Governments are “Road Authorities” under the Roads Act, 1993. Local Government has responsibility for 85 percent of the road network and this portion of the road network accounts for over 50 percent of road accidents.

In 2005 and 2008 the Roads & Transport Directorate of the IPWEA NSW Division commissioned a Road Asset Benchmarking Project to provide a snapshot of the current reported condition of Regional and Local Roads in NSW, an estimate of the shortfall in funding necessary to bring them to a satisfactory condition and specific recommendations about rectification of the problems identified.

In May 2011 the Roads & Transport Directorate released a further set of reports containing the results of the 2010 Road Asset Benchmarking Project.²

The conclusions of the 2010³ report are summarised as follows:

Present funding to meet existing service levels for NSW regional and local roads and bridges is 45% of the life cycle costs, a reduction from 57% in 2007/08. Current level of service with current level of expenditure is not sustainable.

Councils may be facing a large and increasing risk exposure at present and in the future. These risks include:

- *the condition of roads and bridges infrastructure will decline,*
- *potential increase in personal injury and legal claims,*

¹ Copies of submissions are available at:

<http://www.ipwea.org.au/RoadsTransportDirectorate/AboutRD/Submissions/>

² 2006, 2008, 2010 Asset Benchmarking Reports are available at:

<http://www.ipwea.org.au/RoadsTransportDirectorate/AboutRD/AssetBenchmarkingProject/>

³ 2010 Road Asset Benchmarking Report is available at:

<http://higherlogicdownload.s3.amazonaws.com/IPWEA/c7e19de0-08d5-47b7-ac3f-c198b11cd969/UploadedImages/Asset%20Benchmarking%20Project/Road%20Benchmarking%20Report%20010.pdf>

- *road life cycle expenditure 'savings' will be passed onto road users through higher transportation operating costs,*
- *funding will not be available to renew ageing road and bridge assets,*
- *councils will not be able to provide services needed by communities in medium-long term.*

Renewal costs are being transferred to the next generation.

Asset consumption as reported by depreciation expense is understating the assessment of asset consumption by local road asset managers by up to 65%.

Local road assets are estimated to have a renewal cost in excess of \$41.15billion and that asset renewal is substantially less than current asset consumption. The life cycle costs for road assets is estimated at \$1.329billion per annum with expenditure of \$696million per annum leaving a funding gap of \$633million per annum. (Data provided by 142 out of the 152 NSW Councils). On a pro rata basis the funding gap for all councils is \$677million.

The point of providing this information as an introduction to our submission is to show that there is a fundamental underlying funding problem confronting Local Government in NSW. Alarming, the data collected over the past four years clearly shows that the funding gap facing councils is increasing year after year. This points to the NSW regional and Local Road networks being unsustainable in the medium term.

The difficulty this creates in terms of higher productivity freight vehicles is threefold:

1. The existing Regional and Local Road networks have not been adequately maintained and are not able to provide the level of service for which they were designed.
2. The design standards adopted a generation or more ago for the Regional and Local Road networks did not envisage the current HML vehicle loadings and their effect on pavement life.
3. The charging of heavy vehicles for the damage they cause to pavements will provide only marginal cost recovery for road authorities and will not address the need for capital expenditure to bring the Regional and Local Road networks up to a satisfactory standard.

There is an obvious need for additional financial assistance to local councils to allow them to reverse this long term trend. Clearly the local roads network is in an unsatisfactory condition and is deteriorating year by year.

Local Government in NSW has a funding shortfall of \$677million each year in budgeting to maintain the regional and local road network in its present condition. This is an important consideration in assessing heavy vehicle efficiency strategies that result in an increase in the level of service to be provided.

OUR SUBMISSION

The following sections of this submission provide some comments on a number of issues that appear not to be adequately addressed in the PC Issues Paper.

Largely, these issues relate to the provision, maintenance and management of infrastructure by Public Works Managers. In each case, more detailed information can be provided if required.

The scope of the study states:

The challenge for local government is to deliver regulation that is effective in addressing an identified market failure while minimising the costs to the economy, as unnecessary regulatory burdens on business can restrict flexibility and growth for no net benefit.

On the other hand, reducing business costs “at all costs” is not a laudable aim in itself - socialising private sector costs is nothing but cost shifting to ratepayers and taxpayers.

1. Heavy Vehicle Access to Local Roads

The issue of the “first and last mile” has become a significant issue for Councils in NSW. Vehicles using the AusLink National Network need to access ports, processing plants, rail heads and distribution centres using the local road network.

The concerns of a number of councils that HML is not appropriate for implementation on local roads has been raised. The view that HML may be appropriate for highway conditions but not for low speed local pavements which are susceptible to damage due to increased roughness, tight horizontal geometry and the presence of intersections has been discussed with the RTA. The RTA has raised these concerns with the National Transport Commission (NTC) which is the agency having carriage of HML.

Councillors are in the position of having to consider their legal obligations under the provisions of Section 8 of the Local Government Act 1993 which requires them:

- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
- to have regard to the long term and cumulative effects of its decisions
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible

against the national economic benefits which may come from the implementation of HML and other transport reform. In the absence of objective data on which to carry out assessments, some councils are opting not to approve such applications. There is a need for education, increased technical knowledge and the development of assessment standards to allow better outcomes to be obtained. There is a significant cost involved in implementing this solution.

Heavy vehicle access issues including Local Government’s regulation of route approvals are heavily influenced by funding renewal gap for road infrastructure. This will be the largest

single issue facing local Government in the immediate if it is not addressed now. Lesser regulation will simply exacerbate what has become an immense problem.

2. Planning for Infrastructure Sections 64 and 94

The use of S64 and S94 contributions to fund infrastructure for new communities is seen by developers as an unnecessary cost imposition on development. The reduction in standards to road widths and footpaths allows maximum yield for developers while creating substandard communities having irreversible infrastructure problems.

The continued application of S.64/94 is important to avoid cost-shifting from a small number of developers to local ratepayers.

Coupled with this framework is the need to adhere to application of the Aus-Spec standards for the provision of good quality infrastructure. This will require resisting calls to deregulate the specification of infrastructure provision.

A further concern in this area is the gifting of new infrastructure to councils. Many councils are in the position of having to accept new public infrastructure, which is constructed to lower standards than council would otherwise require, without having a source of funds to cover the ongoing maintenance. Rates received from these new properties does not cover the ongoing costs which are typically four or five times the initial capital cost on a whole of life costing basis.

In summary, a reduction in local planning regulation risks throwing away community gains made in the more mature states like NSW and Victoria over past generations. It is our view that all regulation is not intrinsically “bad”.

3. Regulatory Impediments on Local Government

There are a number of constraints on Local Government which restrict its day to day operations. It is not argued that the majority of these constraints should be removed, but simply that they are applied using common sense and that assistance is provided to councils (in some cases legal protection) by way of development of guidelines and training in their application. Some examples are:

- **Risk Management** – Councils are required to manage an ever increasing range of risk issues including Civil Liability claims, OH&S claims, Environmental claims and financial risk. In this respect, Councils are seen as having deep pockets and an increasingly wide range of responsibilities. Added to this is the funding model adopted by many of these regulators which sees their funding provided by the imposition of fines. This environment does not foster the development of education and implementation programmes.
- **OH&S** – the implementation of OH&S legislation has become increasingly onerous for Local Government, worsened by the costing model referred to above. It is extremely rare for a council not to be fined when it attends court on an OH&S matter, no matter how elaborate its systems or how strong its commitment to workplace safety. There is little assistance provided by the regulator to maximise the effort put into improving workplace safety.

- **Environmental Legislation** – Environmental legislation is seen as overriding all other considerations by the courts in NSW. As an example, this has created an untenable position for road asset managers in NSW as a large proportion of the endangered plant species are located in the linear road reserves managed by councils. The problem – Austroads guidelines provide for a 2 metre clear zone from the road shoulder but road managers cannot get approval to remove trees located less than 2 metres from the road shoulder. The road manager (local government) is liable either for not providing a safe road environment or for removing endangered flora. Some sanity must be injected into this area.
- **Waste Management Legislation** – The application of existing waste management legislation to the recycling of road materials is currently cumbersome and does not foster the use of this resource by local road authorities.

4. Deregulation of Council Businesses

Over a period of years councils (particularly in rural areas) have developed a range of local businesses to provide service to their local communities. These businesses have been established using council funding and supported by strong business cases. In each case the council has complied with all appropriate rules and regulations in establishing these enterprises. Examples of such businesses are feedlots attached to council operated saleyards, regional saleyards, and quarries for the production of local road construction materials.

There are concerns now that the regulations covering these operations will be relaxed as a result of pressure being applied by private operators. This will allow private operators to enter the industries at lower cost because of the need for a lower level of compliance, thus devaluing the value of the community resources contributed by local ratepayers.

CONCLUSION

Our submission draws attention to a number of areas of business regulation in which Local Government plays an active role but which have not been specifically dealt with in the Issues Paper. In summary, these matters include:

1. The approval of the use of regional and local roads by heavy vehicles and the perception that a negative response is simply obstruction by local councils. In reality this is a significant asset management issue which local councils need to have adequately resourced.
2. The use of S64 and S94 contributions to fund infrastructure for new communities is seen by developers as an unnecessary cost imposition on development. The continued application of S.64/94 is important to avoid cost-shifting from a small number of developers to local ratepayers.
3. There are a number of constraints on Local Government which restrict its day to day operations. It is not argued that the majority of these constraints should be removed, but simply that they are applied using common sense and that assistance is provided to councils (in some cases legal protection) by way of development of guidelines and

training in their application. In particular, the areas of Risk Management, OH&S, Environmental Legislation and Waste Management Legislation need to be reviewed to ensure that their aims are being met without unnecessary costs to local communities.

4. Over a period of years councils (particularly in rural areas) have developed a range of local businesses to provide service to their local communities. There are concerns now that the regulations covering these operations will be relaxed as a result of pressure being applied by private operators. This will allow private operators to enter the industries at lower cost because of the need for a lower level of compliance, thus devaluing the value of the community resources contributed by local ratepayers.

IPWEA (NSW) and the Roads & Transport Directorate appreciate this opportunity to provide this submission on the *Business Regulation Benchmarking: Role of Local Government* Issues Paper and would value any opportunity to provide any additional details arising from the above submission.

For further information in relation to the submission please do not hesitate to contact the undersigned on:

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